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13  
14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17  
18 MARGARET BARNES, ERIC  
19 SENKYRIK, MICHAEL HOGAN,  
and SHARON JACKSON,  
20 individually and on behalf of all  
others similarly situated,

21 Plaintiffs,

22 v.

23 FORD MOTOR COMPANY,  
24 Defendant.

Case No.:

**CLASS ACTION COMPLAINT  
FOR:**

- (1) Breach of Express Warranty
- (2) Breach of Written Warranty under the Magnuson-Moss Warranty Act
- (3) Breach of Implied Warranty of Merchantability
- (4) Breach of Implied Warranty under the Magnuson-Moss Warranty Act
- (5) Breach of Express Warranty under Tennessee Law
- (6) Breach of Implied Warranty of Merchantability under Tennessee Law
- (7) Violations of the Tennessee Consumer Protection Act

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- (8) Breach of Express Warranty under Texas Law
- (9) Breach of Implied Warranty under Texas Law
- (10) Violations of the Texas Deceptive Trade Practices Act
- (11) Breach of Express Warranty under Florida Law
- (12) Breach of Implied Warranty under Florida Law
- (13) Violation of Florida Deceptive and Unfair Trade Practices Act
- (14) Breach of Express Warranty under Nebraska Law
- (15) Breach of Implied Warranty of Merchantability under Nebraska Law
- (16) Violation of Nebraska Consumer Protection Act
- (17) Unjust Enrichment

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

3. The PowerShift Transmissions in the Class Vehicles suffer from a defect that causes, *inter alia*, transmission slips, bucking, kicking, jerking, harsh engagement, premature internal wear, sudden acceleration, delay in downshifts, delayed acceleration, difficulty stopping the vehicle, and eventually catastrophic transmission failure (the “Transmission Defect”). The Transmission Defect is caused by design, material, manufacturing, and/or workmanship defects of the transmission’s “dry” clutches system which cause clutches to overheat and fail, as well as damage other transmission components. Moreover, the Transmission Defect may be exacerbated by improper programming in the Transmission Control Module (“TCM”), the computer which controls the automatic shifting of the Powershift Transmission. Finally, the Transmission Defect is also the result of manufacturing

1 defects with other components within the Powershift Transmission, as described  
2 further herein.

3 4. Ford has never acknowledged publicly that the Transmission Defect  
4 exists. To the contrary, Ford actively concealed, and continues to conceal, the  
5 Transmission Defect by, among other things, telling customers that the symptoms  
6 associated with the Transmission Defect were “normal driving conditions.” Ford  
7 issued multiple Technical Service Bulletins (“TSBs”) to dealers but never directly  
8 notified consumers of known problems with the PowerShift Transmission.  
9 Additionally, despite numerous TSBs, a well-known legal settlement,<sup>1</sup> and  
10 pervasive press coverage<sup>2</sup> regarding the very same PowerShift Transmission and  
11 Transmission Defect as those in Ford vehicles with earlier model years than the  
12 Class Vehicles, Ford continued to sell and lease the Class Vehicles with the  
13 defective PowerShift Transmission without informing consumers of such defect.  
14 The Transmission Defect has no known repair. Ford internally acknowledges that  
15 there is no permanent fix for the PowerShift Transmission that will eliminate the  
16 Transmission Defect. However, it continued to manufacture and distribute Class  
17 vehicles with the defective PowerShift Transmission through the 2019 model year.

18 5. None of the publicly available information that discussed the  
19 Transmission Defect disclosed, fully or at all, the material facts known only to Ford,  
20 including that the PowerShift Transmission had serious problems since its early  
21 development that Ford simply was unable to fix and that rendered the Class  
22 Vehicles unsafe to drive. The PowerShift Transmission was a new technology to  
23

24 <sup>1</sup> *Vargas v. Ford Motor Company*, C.D. Cal. Case No. 2:12-cv-08388-AB-  
25 FFM. (The class vehicles in this lawsuit were 2012 through 2016 Ford Focus and  
26 Ford Fiesta Vehicles. The class settlement in this litigation was finally approved  
on March 5, 2020.)

27 <sup>2</sup> *See, e.g.,* “Ford workers break their silence on faulty transmissions:  
28 ‘Everybody knew,’” DETROIT FREE PRESS, Dec 5, 2019, updated Dec. 14, 2019,  
<https://www.freep.com/in-depth/money/cars/ford/2019/12/05/ford-focus-fieta-dps-6-transmission-problems/4243091002/> (last visited June 7, 2022).

1 Ford that Ford rushed to the market without disclosing the problems described  
2 above so that Plaintiffs and the Class could make informed purchasing decisions.

3 6. Partial statements in the market about the performance of the  
4 PowerShift Transmission do not excuse Ford's failure to disclose. Only Ford knew  
5 the full truth about the Transmission Defect. It was Ford's obligation to disclose the  
6 material facts that only Ford knew about.

7 7. The Transmission Defect causes unsafe conditions, including, but not  
8 limited to, Class Vehicles suddenly lurching forward, delayed acceleration, and  
9 sudden loss of forward propulsion. These conditions present a safety hazard because  
10 they severely affect the driver's ability to control the car's speed, acceleration, and  
11 deceleration. For example, these conditions make it difficult to safely merge into  
12 traffic. Even more troubling, the Transmission Defect can cause the vehicle to fail  
13 to downshift and decelerate when the brakes are depressed. As a result, Plaintiffs  
14 and Class Members have experienced their cars lurching forward into intersections  
15 at red lights due to the failure of their braking efforts to stop the car.

16 8. The transmission in each of the Class Vehicles is the same DPS6 dual  
17 clutch transmission, and is the same transmission as used in previous model years.  
18 As such, the Transmission Defect is inherent in each of the Class Vehicles and is  
19 present at the time of sale.

20 9. Even with extensive knowledge of the Transmission Defect, Ford has  
21 nevertheless failed to provide any final solution to consumers who purchased or  
22 leased Class Vehicles. Further, Ford has not addressed the source of the defect for  
23 those consumers, including for those whose vehicles are still under warranty. In  
24 fact, Ford merely performs temporary stop-gap remedies such as reprogramming  
25 the TCM. This reprogramming merely "resets" the software specifications on the  
26 transmission and does not prevent the PowerShift Transmission from further  
27 exhibition of the Transmission Defect. Ford may otherwise simply perform  
28 ineffective replacement of certain transmission components with similarly defective

1 transmission components, thereby never actually addressing the cause of the  
2 Transmission Defect.

3 10. Ford dealerships will also sometimes perform repairs to or  
4 replacements of the clutch components of the PowerShift Transmission, but those  
5 repairs are likewise ineffective, and, may require waiting up to six months for  
6 replacement parts to become available, if not longer.

7 11. Indeed, this pattern is so prevalent that Ford prepared a handout for its  
8 dealers entitled “PowerShift 6-Speed Transmission Operating Characteristics.”  
9 Ford drafted this document and provided it to its dealers to give to customers whose  
10 vehicles were exhibiting the Transmission Defect, in an apparent attempt to induce  
11 customers into believing the problems they were experiencing were “normal driving  
12 characteristics.” Nothing in this handout discloses that the PowerShift Transmission  
13 is defective.

14 12. When a consumer’s PowerShift Transmission fails after expiration of  
15 their vehicle’s warranty, the consumer must pay out-of-pocket for the necessary  
16 repairs and may still have to return for repeated service visits. These repairs,  
17 including clutch and TCM replacements, can total thousands of dollars.

18 13. The Transmission Defect prevents Plaintiffs’ and Class Members’  
19 ability to have safe, comfortable, and expected use of their Class Vehicles and  
20 leaves the Class Vehicles incapable of providing safe, reliable transportation.

21 14. Based on pre-production testing, including thermal testing, design  
22 failure mode analysis, early warranty claims, replacement part orders, and consumer  
23 complaints to Ford’s authorized network of dealers, as well complaints to NHTSA,  
24 Ford was aware of the Transmission Defect in the PowerShift Transmission as early  
25 as 2010. Despite being aware of the defect and numerous complaints, Ford  
26 knowingly actively manufactured, distributed, and sold the Class Vehicles  
27 beginning in 2016. Further, Ford affirmatively omitted and concealed the existence  
28 of the Transmission Defect in advertising and manuals to increase profits by selling

1 additional Class Vehicles at inflated prices. Discovery will show that Ford  
2 internally decided that possible permanent solutions would be too expensive to  
3 implement before beginning to manufacture the Class Vehicles and instead decided  
4 to cease using the PowerShift Transmission in model year 2020.

5 15. If Plaintiffs and Class Members had known about the Transmission  
6 Defect at the time of sale or lease, Plaintiffs and Class Members would not have  
7 purchased or leased the Class Vehicles or would have paid less for them.

8 16. As a result of their reliance on Defendants' omissions, owners and/or  
9 lessees of the Class Vehicles suffered an ascertainable loss of money, property,  
10 and/or value of their Class Vehicles. Additionally, as a result of the Transmission  
11 Defect, Plaintiffs and Class Members were harmed and suffered actual damages in  
12 that the Class Vehicles are defective, that they overpaid for defective vehicles, and  
13 that the Class Vehicles' PowerShift Transmissions increase their chances of being  
14 involved in a collision.

## 15 **THE PARTIES**

### 16 **Plaintiff Margaret Barnes**

17 17. Plaintiff Margaret Barnes is a Tennessee citizen and resident.

18 18. On or around October 29, 2019, Plaintiff Barnes purchased a preowned  
19 2017 Ford Focus with approximately 21,000 miles on the odometer from Gossett  
20 Ford, an authorized Ford dealership located in Memphis, Tennessee

21 19. Plaintiff Barnes purchased her 2017 Ford Focus primarily for personal,  
22 family, or household use.

23 20. Passenger safety and reliability were important factors in Plaintiff  
24 Barnes' decision to purchase her vehicle. Before making her purchase, Plaintiff  
25 Barnes researched the 2017 Ford Focus by reviewing the vehicle's CARFAX report,  
26 viewing the vehicle's window sticker(s), and inquiring into the vehicle's safety and  
27 reliability with the vehicle salesperson, who informed Plaintiff Barnes the vehicle  
28



1 was indeed safe and reliable. Plaintiff Barnes believed that the 2017 Ford Focus  
2 would be a safe and reliable vehicle.

3 21. Ford's omissions were material to Plaintiff Barnes. Had Ford disclosed  
4 its knowledge of the Transmission Defect before she purchased her 2017 Ford  
5 Focus, Plaintiff Barnes would have seen and been aware of the disclosures.  
6 Furthermore, had she known of the Transmission Defect, Plaintiff Barnes would not  
7 have purchased her vehicle or would have paid less for her vehicle.

8 22. In or around July 2021, with approximately 27,000 miles on the  
9 odometer, Plaintiff Barnes' transmission began bucking and jerking, as well as  
10 failing to accelerate. In fact, several times Plaintiff Barnes' vehicle refused to  
11 accelerate and stopped entirely on the freeway. Immediately thereafter, Plaintiff  
12 Barnes returned the vehicle to the dealership, which verified the bucking and  
13 jerking, only for Barnes to be informed that she needed a new TCM, but she would  
14 have to get "in line" as no parts were available.

15 23. Thereafter, Plaintiff Barnes contacted Ford's corporate customer  
16 service department, as well as the Ford authorized dealer, multiple times looking  
17 for resolution and repair. Plaintiff Barnes was told she would just have to continue  
18 waiting for the TCM to come in. In February 2022, Plaintiff Barnes stopped driving  
19 the vehicle entirely, out of fear for her safety.

20 24. Plaintiff Barnes' vehicle has not yet been repaired and has continued  
21 to be defective.

22 25. At all times, Plaintiff Barnes, like other class members, has attempted  
23 to drive her vehicle in a manner that was both foreseeable and in which it was  
24 intended to be used.



**Plaintiff Eric Senkyrik**

26. Plaintiff Eric Senkyrik is a Texas citizen and resident.

27. On or around January 1, 2017, Plaintiff Senkyrik purchased a new 2017 Ford Focus with from Appel Ford, an authorized Ford dealership located in Brenham, Texas.

28. Plaintiff Senkyrik purchased his 2017 Ford Focus primarily for personal, family, or household use.

29. Passenger safety and reliability were important factors in Plaintiff Senkyrik's decision to purchase his vehicle. Before making his purchase, Plaintiff Senkyrik viewed Ford advertising online and on the television and reviewed the vehicle's window sticker(s). Plaintiff Senkyrik believed that the 2017 Ford Focus would be a safe and reliable vehicle.

30. Ford's omissions were material to Plaintiff Senkyrik. Had Ford disclosed its knowledge of the Transmission Defect before he purchased his 2017 Ford Focus, Plaintiff Senkyrik would have seen and been aware of the disclosures. Furthermore, had he known of the Transmission Defect, Plaintiff Senkyrik would not have purchased his vehicle or would have paid less for his vehicle.

31. In or around July 2020, with approximately 51,000 miles on the odometer, Plaintiff Senkyrik's vehicle began shuddering, as well as hesitating upon acceleration. As a result, on or around July 28, 2020, the Plaintiff Senkyrik delivered his vehicle to Tipton Ford, an authorized Ford dealership located in Nacogdoches, Texas. The technician "VERIFIED CUSTOMER'S CONCERN OF CLUTCH SHUDDER DURING TAKE OFF." The repair order further noted that the technician "PERFORMED TCM ADAPTIVE RE-LEARN PROCEDURES FOLLOWING IDS INSTRUCTIONS." However, the vehicle was returned to Plaintiff Senkyrik with the shudder still occurring because the shudder was "WITHIN FACTORY SPECIFICATION."

1           32.    Thereafter, Plaintiff Senkyrik continued experiencing transmission  
2 shudder and acceleration hesitation. On or around March 2, 2021, Plaintiff Senkyrik  
3 again returned his vehicle to Tipton Ford in Nacogdoches, Texas and again the  
4 technician “VERIFIED CUSTOMER'S CONCERN OF CLUTCH SHUDDER.”  
5 The repair order further noted that the technician “FOLLOWED FORD  
6 RECOMMENDED PROCEDURES” but no repairs could be performed because  
7 the “CLUTCH SHUDDER [WAS] WITHIN FACTORY SPECIFICATIONS AT  
8 [THE] TIME. Plaintiff Senkyrik’s vehicle was again returned to him with the  
9 transmission shudder and acceleration hesitation still prevalent.

10           33.    Plaintiff Senkyrik’s vehicle has not yet been repaired and continues to  
11 be defective.

12           34.    At all times, Plaintiff Senkyrik, like other class members, has  
13 attempted to drive his vehicle in a manner that was both foreseeable and in which it  
14 was intended to be used.

15    **Plaintiff Michael Hogan**

16           35.    Plaintiff Michael Hogan is a Florida citizen and resident.

17           36.    On or around March 6, 2020, Plaintiff Hogan purchased a preowned  
18 2017 Ford Focus with approximately 17,500 miles on the odometer from  
19 Autonation Ford, an authorized Ford dealership located in St. Petersburg, Florida.

20           37.    Plaintiff Hogan purchased his 2017 Ford Focus primarily for personal,  
21 family, or household use.

22           38.    Passenger safety and reliability were important factors in Plaintiff  
23 Hogan’s decision to purchase his vehicle. Before making his purchase, Plaintiff  
24 Hogan viewed Ford advertising online at the manufacturer’s website and on the  
25 television, reviewed the vehicle’s window sticker(s), and spoke to the dealer staff.  
26 Plaintiff Hogan believed that the 2017 Ford Focus would be a safe and reliable  
27 vehicle.  
28

1           39. Ford's omissions were material to Plaintiff Hogan. Had Ford disclosed  
2 its knowledge of the Transmission Defect before he purchased his 2017 Ford Focus,  
3 Plaintiff Hogan would have seen and been aware of the disclosures. Furthermore,  
4 had he known of the Transmission Defect, Plaintiff Hogan would not have  
5 purchased his vehicle or would have paid less for his vehicle.

6           40. In or around January 2022, with approximately 25,000 miles on the  
7 odometer, Plaintiff Hogan began to experience the Transmission Defect. Plaintiff  
8 Hogan's vehicle began shaking, shuddering, and rattling, as well as stalling out in  
9 traffic. As a result, on or around February 7, 2022, with 25,453 miles on the  
10 odometer, Plaintiff Hogan delivered his vehicle to Autonation Ford, located in St.  
11 Petersburg, Florida. The technician "road tested and verified [customer's] concern,"  
12 which was listed as "POSSIBLE TRANNY ISSUE. STUTTERING AND  
13 VIBRATION." The dealer replaced the vehicle's clutch and seals and returned it to  
14 Plaintiff Hogan. This attempted repair proved to be ineffective.

15           41. On or around April 14, 2022, with 27,616 miles on the odometer,  
16 Plaintiff Hogan again returned his vehicle to Autonation Ford in St. Petersburg,  
17 Florida and again the technician "verified concern" of "CAR SHAKES LIKE  
18 CRAZY." The repair order further noted that the vehicle's clutch and seals were  
19 again replaced. Plaintiff Hogan's vehicle was again returned to him with the  
20 transmission shudder and acceleration hesitation still prevalent. This attempted  
21 repair also proved to be ineffective.

22           42. Plaintiff Hogan's vehicle continues to shake, shudder, and rattle, as  
23 well as stall out in traffic. Plaintiff Hogan's vehicle has not been permanently  
24 repaired and continues to be defective.

25           43. At all times, Plaintiff Hogan, like other class members, has attempted  
26 to drive his vehicle in a manner that was both foreseeable and in which it was  
27 intended to be used.

28

**Plaintiff Sharon Jackson**

44. Plaintiff Sharon Jackson is a Nebraska citizen and resident.

45. On or around May 12, 2018, Plaintiff Jackson purchased a new 2018 Ford Focus from Woodhouse Ford, an authorized Ford dealership located in Omaha, Nebraska.

46. Plaintiff Jackson purchased her 2018 Ford Focus primarily for personal, family, or household use.

47. Passenger safety and reliability were important factors in Plaintiff Jackson's decision to purchase her vehicle. Before making her purchase, Plaintiff Jackson visited the Ford dealer and spoke with the salesperson and reviewed the vehicle's window sticker(s). Plaintiff Jackson believed that the 2018 Ford Focus would be a safe and reliable vehicle.

48. Ford's omissions were material to Plaintiff Jackson. Had Ford disclosed its knowledge of the Transmission Defect before she purchased her 2018 Ford Focus, Plaintiff Jackson would have seen and been aware of the disclosures. Furthermore, had she known of the Transmission Defect, Plaintiff Jackson would not have purchased her vehicle or would have paid less for her vehicle.

49. In or around August 2019, with approximately 21,500 miles on the odometer, Plaintiff Jackson began to experience the Transmission Defect. Plaintiff Jackson's transmission began shuddering and clicking. As a result, on or around August 6, 2019, Plaintiff Jackson delivered her vehicle to Woodhouse Ford, an authorized Ford dealership located in Omaha, Nebraska. The technician "VERIFIED CONCERN" of "clutch chatter." The repair order further noted that the technician "REPROGRAMMED PCM/TCM TO NEWEST SOFTWARE." However, the vehicle was returned to Plaintiff Jackson with the shudder still occurring because the shudder was "WITHIN SPECS." This attempted repair proved to be ineffective.

1           50. Following the attempted repair, Plaintiff Jackson continued  
2 experiencing transmission shudder and also began experiencing acceleration  
3 hesitation and transmission overheating. On or around April 18, 2022, with 88,681  
4 miles on the odometer, Plaintiff Jackson again returned her vehicle to Woodhouse  
5 Ford in Omaha, Nebraska and again the technician “VERIFIED SHUDDER  
6 CONCERN.” The repair order further noted that the technician “replace[d] clutch  
7 and all seals replace[d] both clutch actuators and throw out bearing. Replace[d] both  
8 clutch motors/ replace[d] leaking rear main seal.” This attempted repair proved to  
9 be ineffective.

10           51. Despite this repair, Plaintiff Jackson’s vehicle continues to suffer from  
11 the Transmission Defect and Plaintiff Jackson continues to experience shuddering  
12 and acceleration hesitation. To date, Plaintiff Jackson’s vehicle has not been  
13 permanently repaired and continues to be defective.

14           52. At all times, Plaintiff Jackson, like other class members, has attempted  
15 to drive her vehicle in a manner that was both foreseeable and in which it was  
16 intended to be used.

17 **Defendant**

18           53. Defendant Ford Motor Company is a Delaware limited liability  
19 company with its Corporate Headquarters located at 1 American Road, Dearborn,  
20 Michigan 48126. Ford Motor Company is registered to do business in the State of  
21 California. Ford Motor Company designs and manufactures motor vehicles, parts,  
22 and other products for sale in the United States and throughout the world. Ford  
23 Motor Company is the warrantor and distributor of the Class Vehicles in California  
24 and throughout the United States

25           54. At all relevant times, Defendant was and is engaged in the business of  
26 designing, manufacturing, constructing, assembling, marketing, distributing, and  
27 selling automobiles and motor vehicle components in California and throughout the  
28 United States of America.

1           55. In order to sell vehicles to the general public, Defendant enters into  
2 agreements with dealerships who are then authorized to sell Ford vehicles to  
3 consumers such as Plaintiffs. In return for the exclusive right to sell new Ford  
4 vehicles in a geographic area, authorized dealerships are also permitted to service  
5 and repair these vehicles under the warranties Defendant provides directly to  
6 consumers. These contracts give Defendant a significant amount of control over the  
7 actions of the dealerships, including sales and marketing of vehicles and parts for  
8 those vehicles. All service and repair at an authorized dealership are also completed  
9 according to Defendant's explicit instructions, issued through service manuals,  
10 technical service bulletins ("TSBs"), and other documents. Per the agreements  
11 between Defendant and the authorized dealers, consumers such as Plaintiffs can  
12 receive services under Defendant's issued warranties at dealer locations that are  
13 convenient to them.

14           56. Defendant also develops and disseminates the owners' manuals,  
15 warranty booklets, maintenance schedules, advertisements, and other promotional  
16 materials relating to the Class Vehicles. Defendant is also responsible for the  
17 production and content of the information on the Moroney Stickers.

18           57. Defendant is the drafter of the warranties it provides to consumers  
19 nationwide, the terms of which unreasonably favor Defendant. Consumers are not  
20 given a meaningful choice in the terms of the warranties provided by Defendant,  
21 and those warranties are offered on a "take it or leave it" basis.

### 22                           **JURISDICTION AND VENUE**

23           58. This action is properly before this Court and this Court has subject  
24 matter jurisdiction over this action under the Class Action Fairness Act. At least one  
25 member of the proposed class is a citizen of a different state than Ford, the number  
26 of proposed class members exceeds 100, and the amount in controversy exceeds the  
27 sum or value of \$5,000,000.00 exclusive of interests and costs. 28 U.S.C. §  
28 1332(d)(2)(A).

1           59. In addition, under 28 U.S.C. § 1367, this Court may exercise  
2 supplemental jurisdiction over the state law claims because all of the claims are  
3 derived from a common nucleus of operative facts and are such that Plaintiffs would  
4 ordinarily expect to try them in one judicial proceeding.

5           60. Ford, through its business of distributing, selling, and leasing the  
6 Class Vehicles, has established sufficient contacts in this district such that  
7 personal jurisdiction is appropriate. Defendant is deemed to reside in this district  
8 pursuant to 28 U.S.C. § 1391(a).

9           61. This Court has personal jurisdiction over Defendant because it has  
10 consented to jurisdiction by registering to conduct business in the state; maintains  
11 sufficient minimum contacts in California; and otherwise intentionally avails itself  
12 of the markets within California through promotion, sale, marketing and distribution  
13 of its vehicles, which renders the exercise of jurisdiction by this Court proper and  
14 necessary.

15           62. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)-(c). A  
16 substantial part of the events or omissions giving rise to the claims occurred in this  
17 District.

18                           **FACTUAL ALLEGATIONS**

19           63. For years, Ford has designed, manufactured, distributed, sold, leased,  
20 and warranted the Class Vehicles.

21           64. Ford marketed and sold thousands of Class Vehicles nationwide,  
22 including through its nationwide network of authorized dealers and service  
23 providers. Ford sells its vehicles to its authorized dealerships, which in turn sell  
24 those vehicles to consumers. After these dealerships sell cars to consumers,  
25 including Plaintiffs and Class Members, they purchase additional vehicle inventory  
26 from Ford to replace the vehicles sold, increasing Ford's revenues. Thus, Plaintiffs'



1 and Class Members' purchase of Class Vehicles accrues to the benefit of Ford by  
2 increasing its revenues. In 2019, Ford reported its revenues as \$155.9 billion.<sup>3</sup>

3 65. Ford provides several warranties when consumers purchase Ford-  
4 branded vehicles, including a "Bumper to Bumper", 3-year or 36,000-mile  
5 warranty, and a Powertrain, 5-year or 60,000-mile warranty. Both of these  
6 warranties are part of the New Vehicle Limited Warranty ("NVLW") provided by  
7 Ford to purchasers of new Ford-branded vehicles. These warranties are transferrable  
8 to subsequent owners, within the stated durational or mileage limits of the  
9 warranties.

10 66. The transmission, including "all internal parts, clutch cover, seal and  
11 gaskets, torque converter, transfer case (including all internal parts, transmission  
12 case, [and] transmission mounts," is covered by both the "Bumper to Bumper" and  
13 the Powertrain warranty.

14 67. The NVLW provided by Ford promises that "authorized Ford Motor  
15 Company dealers will, without charge, repair, replace, or adjust all parts on your  
16 vehicle that malfunction or fail during normal use during the applicable coverage  
17 period." Ford also limited the remedy under the NVLW "to repair, replacement, or  
18 adjustment of defective parts" and states that "[t]his exclusive remedy shall not be  
19 deemed to have failed its essential purchase so long as Ford, through its authorized  
20 dealers, is will and able to repair, replace, or adjust defective parts in the prescribed  
21 manner."

22 68. Each of the attempted repairs to Plaintiffs' vehicles was provided to  
23 Plaintiffs under the NVLW.

24 69. Since at least 2010, Ford has been manufacturing and selling vehicles  
25 with the same or substantially similar PowerShift Transmission as those in the Class  
26 Vehicles. The Class Vehicles themselves have identical PowerShift Transmissions

27  
28 <sup>3</sup> See 2019 Ford Annual Report,  
<https://annualreport.ford.com/Y2019/default.aspx> (last visited June 13, 2022).

1 that do not differ materially from the PowerShift Transmissions installed in  
2 previous model years of the same vehicles.

3 70. Ford's PowerShift Transmission, while sometimes referred to as an  
4 automatic, is actually a set of computerized manual transmissions. It lacks a torque  
5 converter, instead using two "dry" clutches to directly connect and disconnect the  
6 engine to and from the transmission. Whereas other automated manual  
7 transmissions on the market use "wet" clutches bathed in oil, Ford's PowerShift  
8 clutches lack the oil pumps and other components of a wet clutch system, and  
9 instead operate dry.

10 71. Ford designed and manufactured the Class Vehicles' computerized  
11 "automated manual" transmissions in an effort to meet heightened governmental  
12 and consumer expectations for fuel economy, performance, and efficiency.  
13 Theoretically, such a transmission should have the convenience of an automatic  
14 transmission without sacrificing fuel efficiency. In practice, however, Ford's  
15 PowerShift Transmission has been plagued by numerous problems and safety  
16 hazards.

17 72. Dating back to at least 2010, Ford was aware of the defects of the  
18 PowerShift Transmission. Ford, however, failed and refused to disclose these  
19 known defects to consumers. Instead, Ford continued to manufacture and distribute  
20 vehicles with the PowerShift Transmission, including the Class Vehicles. As a  
21 result of this failure, Plaintiffs and Class Members have been damaged.

### 22 **The PowerShift Transmission and Defect**

23 73. Discovery will show that the Transmission Defect results from the  
24 design and/or poor manufacturing and workmanship of the dry clutches which cause  
25 the clutch and other Transmission components to overheat, thus forcing the TCM  
26 to "instruct" the clutches to disengage or slow in order to prevent further damage to  
27 the transmission. Furthermore, the Transmission Defect may be exacerbated by  
28 improper programming and/or calibrating of the TCM. Finally, the Transmission

1 Defect is also the result of manufacturing defects with other components within the  
2 Powershift Transmission, as described below.

3 74. Traditional manual transmissions use a driver-controlled clutch. By  
4 pressing and releasing a foot pedal, the driver engages and disengages the engine  
5 from the transmission, allowing the vehicle to travel smoothly while the driver  
6 manually changes gears.

7 75. In contrast, typical automatic transmissions free the driver from  
8 operating the clutch through the use of a fluid-filled device called a torque  
9 converter. The torque converter substitutes for the manual transmission's clutch,  
10 transmitting power from the engine to the transmission through a fluid medium.

11 76. While typical automatic transmissions offer increased convenience,  
12 they are generally less fuel-efficient and slower-shifting than their manual  
13 counterparts. This is because the torque converter transfers power less efficiently  
14 than a clutch. As a result, Ford marketed and sold its PowerShift Transmission as a  
15 "best of both worlds" alternative, offering a manual transmission's fuel economy  
16 with an automatic transmission's ease of operation and shift quality.

17 77. Ford's PowerShift Transmission, while sometimes referred to as an  
18 "automatic," is actually a set of computerized manual transmissions. It lacks a  
19 torque converter, instead using two "dry" clutches to directly engage and disengage  
20 the engine with and from the transmission. Whereas similar "automated manual"  
21 transmissions on the market use "wet" clutches bathed in oil, Ford's PowerShift  
22 Transmission clutches lack the oil pumps and other components of a wet clutch  
23 system, and instead operate "dry."

24 78. Ford designed the Class Vehicles' computerized "automated manual"  
25 transmissions in an effort to meet heightened governmental and consumer  
26 expectations for fuel economy, performance, and efficiency. According to Ford's  
27 own press release, dated March 10, 2010, "PowerShift with dry-clutch facings and  
28 new energy-saving electromechanical actuation for clutches and gear shifts saves

1 weight, improves efficiency, increases smoothness, adds durability and is sealed  
2 with low-friction gear lubricant for the life of the vehicle. This transmission requires  
3 no regular maintenance.”<sup>4</sup>

4 79. Theoretically, an “automated manual” transmission, *i.e.*, the  
5 PowerShift Transmission, should have the convenience of an automatic  
6 transmission without sacrificing the fuel efficiency and shift speed of a manually-  
7 shifted vehicle. In practice, however, Ford’s PowerShift Transmission is plagued  
8 by numerous problems and safety concerns, rendering the vehicle virtually  
9 inoperable.

10 80. The Transmission Defect causes unsafe conditions, including, but not  
11 limited to, Class Vehicles suddenly lurching forward, sudden acceleration, delayed  
12 acceleration, and sudden loss of forward propulsion. These conditions present a  
13 safety hazard because they severely affect the driver’s ability to control the car’s  
14 speed, acceleration, and deceleration. As an example, these conditions may make it  
15 difficult to safely merge into traffic. Even more troubling, the Transmission Defect  
16 can cause the vehicle to fail to downshift and decelerate when the brakes are  
17 depressed. As a result, Plaintiffs and Class Members have experienced their cars  
18 lurching forward into intersections at red lights due to the failure of their braking  
19 efforts to stop the car.

20 81. Discovery will show the Transmission Defect also causes premature  
21 wear to the PowerShift Transmission’s clutch plates and other components, which  
22 can result in premature transmission failure and requires expensive repairs,  
23 including replacement of the transmission and its related components.

24  
25  
26 <sup>4</sup> See MarketScreener.com, “FORD: PowerShift Transmission Production  
27 Begins, Driving Ford Small Car Fuel Economy Leadership,”  
28 <https://www.marketscreener.com/quote/stock/FORD-MOTOR-COMPANY-12542/news/FORD-PowerShift-Transmission-Production-Begins-Driving-Ford-Small-Car-Fuel-Economy-Leadership-13346361/> (last visited June 8, 2022).

1           82. The transmission in each of the Class Vehicles is the same DPS6 dual  
2 clutch transmission, and is the same transmission as used in previous model years.  
3 Moreover, despite extensive knowledge of the Transmission Defect from prior  
4 model years, Ford made no changes to the DPS6 dual clutch transmission before  
5 manufacturing the Class Vehicles. As such, the Transmission Defect was inherent  
6 in each Class Vehicle and was present in each Class Vehicle at the time of sale.

7           83. Ford knew about the Transmission Defect present in every Class  
8 Vehicle, along with the attendant safety problems, and concealed this information  
9 from Plaintiffs and Class Members at the time of sale, lease, repair, and thereafter.  
10 In fact, instead of repairing the Class Vehicles, Ford has insisted that the vehicles  
11 are working as designed.

12           84. If Plaintiffs and Class Members had known about the Transmission  
13 Defect at the time of sale or lease, Plaintiffs and Class Members would not have  
14 purchased or leased the Class Vehicles or would have paid less for them.

15           85. As a result of their reliance on Defendants' omissions, owners and/or  
16 lessees of the Class Vehicles suffered an ascertainable loss of money, property,  
17 and/or value of their Class Vehicles. Additionally, as a result of the Transmission  
18 Defect, Plaintiffs and Class Members were harmed and suffered actual damages in  
19 that the Class Vehicles are defective, that they overpaid for defective vehicles, and  
20 that the Class Vehicles' PowerShift Transmissions increase their chances of being  
21 involved in a collision by overheating, catching fire or catastrophically failing.

22           **Ford Had Superior and Exclusive Knowledge of the Transmission Defect**

23           86. Ford became aware of the Transmission Defect at least as early as  
24 2010, well before Plaintiffs and Class Members purchased their Class Vehicles.  
25 Ford learned of the defect through sources such as pre-release evaluation and testing  
26 including thermal testing; repair data; replacement part sales data; early consumer  
27 complaints made to Ford and/or NHTSA, and/or posted on public online vehicle  
28 owner forums; testing done in response to those complaints; aggregate data from

1 Ford dealers; as well as through other internal sources unavailable to Plaintiffs prior  
2 to discovery.

3 87. While designing, manufacturing, engineering, and testing Class  
4 Vehicles in advance of the vehicles' release, Ford would have gained  
5 comprehensive and exclusive knowledge about the PowerShift Transmissions  
6 installed in those Vehicles. Adequate pre-release analysis of the design,  
7 engineering, and manufacture of the PowerShift Transmissions in the Class  
8 Vehicles would have revealed to Ford that the design and/or manufacture of the  
9 Transmission was defective and susceptible to dry clutch overheating. Indeed, pre-  
10 production thermal testing of vehicles with the PowerShift Transmission revealed  
11 the Transmission Defect and associated safety risk. Despite this, Ford manufactured  
12 hundreds of thousands of vehicles with this defective transmission, including the  
13 Class Vehicles.

14 88. Indeed, investigation by the Detroit Free Press revealed that Ford had  
15 been discussing the Transmission Defect since at least 2010. A 2012 "Lessons  
16 Learned" review of the PowerShift Transmission drafted by Ford employees stated  
17 "at each early checkpoint, it became more apparent" that the transmissions "were  
18 not capable to meet customer expectations."<sup>5</sup> As reported, "[a] page was devoted  
19 to milestone failures with 23 'red' alert issues related to calibration and '115  
20 software changes required before [the] launch" of the 2011 Ford Fiesta with the  
21 PowerShift Transmission.<sup>6</sup>

22 89. According to one former Ford engineer, design and release engineers,  
23 calibration development engineers, manufacturing engineers, customer service engineers  
24 and transmission engineers all knew the transmissions were defective. According to  
25 the Detroit Free Press's investigation, "Ford engineers and their supervisors

26 <sup>5</sup> See Lessons Learned, DETROIT FREE PRESS (July 11, 2019),  
27 <https://www.freep.com/in-depth/money/cars/ford/2019/07/11/ford-focus-fiesta-transmission-defect/1671198001/> (last visited June 13, 2022).

28 <sup>6</sup> *Id.*

1 exchanged emails confirming that a serious problem existed with no identifiable  
2 solution.”<sup>7</sup> To extent a solution was possible, it would involve expensive changes,  
3 including to contracts with certain suppliers, and such changes were abandoned.  
4 Instead, Ford decided to phase out the use of the PowerShift Transmission, which  
5 meant it would continue to include the transmission with its known defects in  
6 models not yet in production, including the Class Vehicles.

7 90. Despite this knowledge, no material change was made to the  
8 PowerShift Transmission such that the Transmission Defect was fully resolved.  
9 Instead, Ford spent years adjusting the TCM programming and calibration,  
10 replacing blown clutches, and fixing seal leaks as stop-gap measures that did not  
11 remedy the Transmission Defect.

12 91. Instead, Ford marketed the PowerShift transmission in Class Vehicles  
13 as one that “feels like an automatic and is designed to provide fuel efficiency and  
14 performance.”

15 92. Indeed, on August 14, 2019, Ford issued a press release stating  
16 “[b]ased on internal and external data, Focus and Fiesta vehicles with automatic  
17 transmissions built since the second half of 2015 – and earlier models that have  
18 received components and software updates – perform well and have competitive  
19 levels of satisfaction.”<sup>8</sup> This statement suggested that Ford had remedied the  
20 Transmission Defect in PowerShift Transmissions. However, by this time, Ford was  
21 already well-aware of continuing consumer complaints about the Transmission  
22 Defect in model year 2017 and newer vehicles, as well as its own internal data  
23 regarding its decision not to implement a permanent repair and, as a result, to  
24 eventually phase-out use of the PowerShift Transmission in future vehicles.

25 <sup>7</sup> *Id.*

26 <sup>8</sup> “Ford Statement on Latest DPS6 Customer-Satisfaction Actions,”  
27 available at  
28 <https://media.ford.com/content/fordmedia/fna/us/en/news/2019/08/14/ford-statement-on-dps6-customer-satisfaction-actions.html> (last visited June 17, 2022).



93. Moreover, when questioned by reporters or others investigating the Transmission Defect, Ford touted the fact that NHTSA had not directed them to issue a recall and that no government had found a problem with the PowerShift Transmission. In fact, the Federal Court in Australia declared in a consent judgement that Ford Motor Company of Australia Limited “engaged in unconscionable conduct in the way it deal with complaints about PowerShift transmission cars, and order Ford to pay \$10 million in penalties.”<sup>9</sup> In particular, the Court found that “Ford communicated with its dealers about the quality issues on multiple occasions, but did not provide adequate information about the quality issues to the customers who complained to Ford about their vehicles.”<sup>10</sup> Moreover, despite knowing that the Transmission Defect’s symptoms were intermittent, Ford demanded that customer prove they were experiencing problems in order to secure warranty repairs and further blamed customers’ driving styles for the shuddering and vibration they were experiencing.

### NHTSA Complaints

94. Federal law requires automakers like Ford to be in close contact with NHTSA regarding potential auto defects, including imposing a legal requirement, backed by criminal penalties for violation, of confidential disclosure of defects by automakers to NHTSA, including field reports, customer complaints, and warranty data. *See* TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

95. Automakers have a legal obligation to identify and report emerging safety-related defects to NHTSA under the Early Warning Report requirements. *Id.*

<sup>9</sup> “Court orders Ford to pay \$10 million penalty for unconscionable conduct,” AUSTRALIAN COMPETITION & CONSUMER COMMISSION (Apr 26, 2018) <https://www.accc.gov.au/media-release/court-orders-ford-to-pay-10-million-penalty-for-unconscionable-conduct#:~:text=The%20Federal%20Court%20has%20declared,pay%20%2410%20million%20in%20penalties> (last visited June 13, 2022).

<sup>10</sup> *Id.*

1 Similarly, automakers monitor NHTSA databases for consumer complaints  
 2 regarding their automobiles as part of their ongoing obligation to identify potential  
 3 defects in their vehicles, including those which are safety-related, such as  
 4 spontaneous engine fires.

5 96. Many Class Vehicle owners and lessees submitted complaints about  
 6 the Transmission Defect with NHTSA's Office of Defect Investigations ("ODI").

7 97. From its monitoring of the NHTSA databases, Ford knew or should  
 8 have known of the many complaints about Transmission Defect logged by NHTSA  
 9 ODI, and the content, consistency, and large number of those complaints alerted, or  
 10 should have alerted, Ford that the Transmission Defect is widespread in Class  
 11 Vehicles, and a safety hazard.

12 98. The following complaints are a sampling of the scores of available  
 13 complaints through NHTSA's website, [www.safercar.gov](http://www.safercar.gov), which reveal that Ford,  
 14 through its network of dealers and repair technicians, was made aware of many  
 15 transmission failures in Class Vehicles.

#### 16 **2017 Ford Fiesta**

- 17 a. NHTSA ID Number: 11443656, Date Reported: December 13, 2021,  
 18 Incident Date December 9, 2021, Consumer Location FRANKFORT,  
 19 KY, Vehicle Identification Number 3fadb4gx3hm\*\*\*\*

20  
 21 The contact owns a 2017 Ford Fiesta. The contact stated while driving 65  
 22 MPH with the cruise control engaged, the contact depressed the clutch to  
 23 shift gear however, the clutch seized, and the contact was unable to shift  
 24 into gear. The contact placed the vehicle into neutral and veered to the  
 25 side of the road. The contact looked under the hood and smelled an  
 26 abnormal chemical odor coming from the engine. The contact had the  
 27 vehicle towed to a local dealer who diagnosed the vehicle with a faulty  
 28 clutch. The contact was informed that the clutch needed to be replaced.  
 The vehicle was not repaired. The manufacturer was made aware of the  
 failure. The failure mileage was approximately 120,000.

1 b. NHTSA ID Number: 11364085, Date Reported: October 13, 2020,  
2 Incident Date October 11, 2020 Consumer Location STATEN ISLAND,  
3 NY Vehicle Identification Number 3FADP4EJ6HM\*\*\*\*

4 ON OCCASION WHILE BACKING UP STEEP AT HOME  
5 DRIVEWAY (APROX 15-20 DEGREES) TRANSMISSION SLIPS  
6 OUT OF GEAR AND ROLLS FORWARD. STEP ON BRAKE  
7 IMMEDIATELY AND INSTANTLY SHIFTS BACK INTO REVERSE.  
8 HAS HAPPENED 3-5 TIMES SINCE VEHICLE WAS NEW.

9 c. NHTSA ID Number: 11352938, Date Reported: September 3, 2020,  
10 Incident Date August 28, 2020 Consumer Location HILLSBORO, IL  
11 Vehicle Identification Number 3FADP4BJ7HM\*\*\*\*

12 THE CONTACT'S DAUGHTER OWNS A 2017 FORD FIESTA. THE  
13 CONTACT STATED THAT WHILE HER DAUGHTER WAS  
14 DRIVING AT VARIOUS SPEEDS, THE VEHICLE HESITATED AS  
15 SEVERAL TRANSMISSION WARNING LIGHTS WOULD APPEAR  
16 ON THE INSTRUMENT PANEL. DUE TO THE FAILURE, THE  
17 CONTACT'S DAUGHTER HAD THE VEHICLE TOWED TO  
18 AUFFENBERG FORD NORTH, INC. (115 REGENCY PARK,  
19 O'FALLON, IL 62269) WHERE THE CONTACT WAS INFORMED  
20 THAT THE CLUTCH FAILED INSIDE THE TRANSMISSION AND  
21 NEEDED TO BE REPLACED. THE CONTACT WAS INFORMED  
22 THAT THERE WERE NO RECALLS ON THE VEHICLE. THE  
23 MANUFACTURER WAS ALSO NOTIFIED OF THE FAILURE AND  
24 REFERRED THE CONTACT TO NHTSA FOR ASSISTANCE. THE  
25 VEHICLE HAD YET TO BE REPAIRED. THE FAILURE MILEAGE  
26 WAS APPROXIMATELY 65,000.  
27  
28

- 1 d. NHTSA ID Number: 11234539, Date Reported: July 24, 2019, Incident  
2 Date June 4, 2019 Consumer Location CHARLESTOWN, IN

3 THE CONTACT OWNS A 2017 FORD FIESTA. WHILE DRIVING  
4 VARIOUS SPEEDS, THE VEHICLE LOST POWER WITHOUT  
5 WARNING AND WAS DIFFICULT TO RESTART. THE VEHICLE  
6 WAS TAKEN TO HERITAGE FORD (LOCATED AT 2075 EDSSEL LN  
7 NW, CORYDON, IN 47112, (812) 738-3284) TO BE DIAGNOSED.  
8 THE DEALER STATED THAT THERE WAS EVIDENCE OF A  
9 FAULT CODE; HOWEVER, THE TRANSMISSION CONTROL  
MODULE NEEDED TO BE REPLACED. THE VEHICLE WAS NOT  
REPAIRED. THE MANUFACTURER WAS NOT CONTACTED  
ABOUT THE FAILURE. THE APPROXIMATE FAILURE MILEAGE  
WAS 50,000. THE VIN WAS NOT AVAILABLE.

- 10 e. NHTSA ID Number: 11217873, Date Reported: June 4, 2019, Incident  
11 Date April 1, 2019 Consumer Location Unknown Vehicle Identification  
12 Number 3FADP4EJ8HM\*\*\*\*\*

13 ON THE CLUTCH IS GOING OUT OF THE TRANSMISSION

- 14 f. NHTSA ID Number: 11170576, Date Reported: January 7, 2019, Incident  
15 Date December 10, 2018 Consumer Location WASHINGTON, DC  
16 Vehicle Identification Number 3FADP4EJ4GM\*\*\*\*\*

17  
18 THE CAR JERKS AND SHUTTERS WHEN PRESSING ON THE GAS.  
19 THE CAR LOSES POWER AND WILL NOT GO OVER 40-50 MILES  
20 A HOURS, WHICH IS VERY DANGEROUS WHEN DRIVING ON  
21 THE INTERSTATE. THE CAR IS NOT CHANGING GEAR  
PROPERLY

- 22 g. NHTSA ID Number: 11164590, Date Reported: January 2, 2019, Incident  
23 Date December 28, 2018 Consumer Location TARZANA, CA Vehicle  
24 Identification Number 3FADP4EJ1HM\*\*\*\*\*

25 THE CONTACT OWNS A 2017 FORD FIESTA. ON SEVERAL  
26 OCCASIONS, WHILE DRIVING VARIOUS SPEEDS, THE VEHICLE  
27 JERKED ABNORMALLY AND STALLED. THE VEHICLE WAS  
28 TAKEN TO VISTA FORD WOODLAND HILLS (LOCATED AT  
21501 VENTURA BLVD, WOODLAND HILLS, CA 91364, (818) 884-

7600) WHERE IT WAS DIAGNOSED THAT THE TRANSMISSION CONTROL MODULE WAS FAULTY; HOWEVER, THE MANAGER STATED THAT THERE WAS NO FAILURE WITH THE VEHICLE. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 18,000 REPORT.

### **2019 Ford Fiesta**

- h. NHTSA ID Number: 11427182, Date Reported: July 30, 2021, Incident Date May 1, 2021 Consumer Location MINNEAPOLIS, MN Vehicle Identification Number 3FADP4EJ2KM\*\*\*\*\*

TL\* The contact owns a 2019 Ford Fiesta. The contact stated while driving at various speeds, the transmission started slipping and the vehicle would not properly accelerate while depressing the accelerator pedal. The vehicle was taken to the local dealer who diagnosed that the transmission clutch and seal kit was faulty and needed to be replaced. The vehicle was not repaired. The manufacturer was notified of the failure. The failure mileage was 60,000 \*LN \*TR

- i. NHTSA ID Number: 11424034, Date Reported: July 9, 2021, Incident Date February 1, 2021 Consumer Location JACKSONVILLE, FL Vehicle Identification Number 3FADP4BJ3KM\*\*\*\*\*

The CAR has the defect that it skips the transmission changes, from the first to the second it stays accelerated, it resists the change, it is a danger it stays accelerated until it finally goes to second and lowers the revolutions. I visited an auto parts store for a scanner and that was the code: Transmission friction PO7A3x2. Here I send you some news, ford, ford defects on your focus and fiesta vehicles. <http://www.fordtransmissionproblems.com/fords-transmission-problem> Ford's PowerShift dual-clutch transmission was used in 2010. Class vehicles are the Ford Fiesta (model years 2011-2016) and Ford Focus (model years 2012-2016) equipped with a PowerShift transmission. The PowerShift transmission is basically a manual transmission electronically controlled by a computer while using a 'dry clutch' rather than a 'wet clutch', which means that no oil is supplied to the shift mechanism and can result in increased wear to as problems persist. When the computer

1 module used to operate the transmission cannot handle rapid acceleration  
2 or gear changes, the vehicle sputters and creates an audible noise. The  
3 vehicle may also experience downshifting issues, which means the vehicle  
4 will stay in a higher gear despite deceleration and jerk will result.  
5 However, this is not just a matter of convenience or comfort. When  
6 accelerating quickly through an intersection, the delay can be dangerous  
7 as it prevents the vehicle from reaching the same speed as it would with  
8 an automatic transmission. When it comes to decelerating, the inability of  
9 the car to downshift properly can cause the vehicle to roll forward, even  
10 when the brakes are applied, posing a safety hazard in many  
11 circumstances. This is all a safety hazard

- 12 j. NHTSA ID Number: 11399639, Date Reported: March 19, 2020, Incident  
13 Date November 23, 2020 Consumer Location MINERAL, VA Vehicle  
14 Identification Number 3FADP4BJ3KM\*\*\*\*

15 TL\* MY 2019 FORD FIESTA AUTOMATIC DOES NOT SHIFT  
16 GEARS PROPERLY, MY CAR WOULD NOT REVERSE AND  
17 THEREFORE CAUSED A SMALL FENDER BENDER. IT HAS NO  
18 SPEED AND RUNS ROUGH

- 19 k. NHTSA ID Number: 11210169, Date Reported: May 27, 2019, Incident  
20 Date February 3, 2019 Consumer Location UNIONTOWN, PA Vehicle  
21 Identification Number 3FADP4AJ3KM\*\*\*\*

22 THE VEHICLE HAS A PROBLEM WITH THE POWERSHIFT  
23 AUTOMATIC TRANSMISSION IT'S VERY SLUGGISH WHEN  
24 SHIFTING WHEN YOU TAP THE ACCELERATOR WITH YOUR  
25 FOOT AFTER BEING AT A STOP SIGN THE CAR JOLTS LIKE  
26 PREVIOUS YEAR AND MODELS OF THIS CAR.

- 27 l. NHTSA ID Number: 11398847, March 3, 2021, Incident Date April 26,  
28 2019 Consumer Location BRASELTON, GA Vehicle Identification  
Number 3FADP4BJ1JM\*\*\*\*



1 TL\* VEHICLE DRIVING ON INTERSTATE WHEN A VIBRATION  
 2 WAS FELT THROUGH THE STEERING WHEEL, THEN THE  
 3 VEHICLE STARTED LOSE POWER. GEAR SHIFT STILL IN DRIVE  
 4 ENGINE STILL RUNNING AND COASTED TO A STOP ON SIDE OF  
 5 HIGHWAY. VEHICLE WAS REAR ENDED FOUND OUT THAT THE  
 6 LEFT DRIVE AXLE HAD BECOME DISCONNECTED AT THE  
 7 TRANSMISSION END. WHEN THIS HAPPENS THE SV HAS NO  
 8 WAY TO MAINTAIN A SAFE SPEED

- 9 m. NHTSA ID Number: 11328346, Date Reported: June 11, 2020, Incident  
 10 Date June 20, 2019 Consumer Location MOUNTAIN TOP, PA Vehicle  
 11 Identification Number 3FADP4BJ8JM\*\*\*\*

12 CAR SHUDDERS UPON ACCELERATION FROM STANDSTILL.  
 13 LOSES POWER SEVERELY GOING UPHILL.  
 14 ENGINE/TRANSMISSION SHAKES SHUDDERS ENGINE RACES  
 15 AND QUICKLY ACCELERATES AFTER LOSS OF POWER THEN  
 16 DECREASES AGAIN. WHEN MOVING FROM STOP CAR  
 17 SHUDDERS MAKES A GRINDING NOISE AND THEN SLOWLY  
 18 ACCELERATES BEFORE DECREASING RPM AND THEN RACES  
 19 AGAIN

20 **2018 Ford Fiesta**

- 21 n. NHTSA ID Number: 11321226, Date Reported: April 15, 2020, Incident  
 22 Date August 1, 2019 Consumer Location WASHINGTON, DC Vehicle  
 23 Identification Number 3FADP4BJ9JM\*\*\*\*

24 WHILE DRIVING THE AUTOMATIC TRANSMISSION SHUTTERS  
 25 WHEN GOING INTO SECOND GEAR AND STALLS BEFORE  
 26 ACCELERATING. SOME TIMES THE CAR WON'T START AND  
 27 IT'S NOT RELATED TO THE BATTERY OR THE STARTER. IT  
 28 ALSO HAD A PURGE VALVE REPLACEMENT THREE MONTHS  
 AFTER PURCHASE. A FEW MONTHS LATER I HAD TO REPLACE  
 IT AGAIN THIS TIME IT WASN'T UNDER WARRANTY. I  
 PURCHASED THIS CAR BRAND NEW IN 2018 AND IT HAD ALL  
 THESE ISSUES IN 2018 AND OCTOBER OF 2019 IS WHEN THE  
 TRANSMISSION BEGAN TO SHUTTER.



- o. NHTSA ID Number: 11240281, Date Reported: July 29, 2019, Incident Date June 8, 2019 Consumer Location CLAYTON, NC Vehicle Identification Number 3FADP4EJ6JM\*\*\*\*

L\* THE CAR WAS DRIVING AT 68 MPH AND APPROXIMATELY 2500 RPM STARTED TO LOOSE SPEED DOWN SLIGHT HILL AND RPMS INCREASED TO 5,500 RPM. LET OFF THE ACCELERATOR 3 SECONDS RPMS DECREASED REAPPLIED ACCELERATOR AND OPERATED PROPERLY.

- p. NHTSA ID Number: 11221498, Date Reported: June 20, 2019, Incident Date June 7, 2019 Consumer Location LAS VEGAS, NV Vehicle Identification Number 3FADP4J6JM1\*\*\*\*

L\* BEEN NOTICING NOW WITH THE FORD FIESTA 2018 THAT MY THIRD GEAR. LOSES THE GRIP GOING UP HILL. BEEN LIKE THIS FOR A FEW WEEKS. I HAVE TAKEN THE CAR TO THE DEALER. TWO TIMES HAVE THEY REPAIR IT. YET, SADLY SEEMS THAT THIS WILL BE THE THIRD AND FINAL TIME. CAN'T BELIEVE.

### **2017 Ford Focus**

- q. NHTSA ID Number: 11456868, Date Reported: March 15, 2022, Incident Date March 15, 2022 Consumer Location PRYOR, OK Vehicle Identification Number 1fadp3h23hl\*\*\*\*

L\* The contact owns a 2017 Ford Focus. The vehicle had previously had two transmissions replaced. The contact stated that while driving at an undisclosed speed, the accelerator pedal was depressed and the engine revved, but the vehicle hesitated to accelerate. The vehicle was not diagnosed nor repaired by an independent mechanic or dealer. The manufacturer was made aware of the failure and informed the contact that there was no recall associated with the VIN. The manufacturer advised the contact to file a complaint with the NHTSA. The failure mileage was approximately 48,000.

1 ORD DOESN'T DO DURABLE MANUALS ANYMORE. THE  
2 ISSUES ARE A LOT ON THE HIGHWAY. CAN'T AFFORD A  
3 CRASH OR ACCIDENT.

- 4 r. NHTSA ID Number: 11454667, Date Reported: March 1, 2022, Incident  
5 Date March 1, 2022 Consumer Location COVINGTON, LA Vehicle  
6 Identification Number 1fadp3j20hl\*\*\*\*\*

7 The transmission in this car has burned a clutch up at 30k miles and  
8 replaced by Ford after having to twist their leg to do it. 10k miles later it  
9 was slipping again. Currently it is at 70k miles and the clutch is going out  
10 again. Ford refuses to take responsibility for this faulty transmission since  
11 it is a 2017 model and not included in the class action suit for the model  
12 just a year prior, although it is the same transmission. The slipping,  
13 stalling and jerking is a danger when pulling out into traffic and I hope it  
14 does not cause me to get in an accident and have to sue them for even  
15 more than I need to sue them for now for selling me faulty unsafe junk  
16 that doesn't last and puts my families life at risk.

- 17 q. NHTSA ID Number: 11450358, Date Reported: February 4, 2022,  
18 Incident Date September 9, 2019 Consumer Location YUMA, AZ Vehicle  
19 Identification Number 1FADP3M2XHL\*\*\*\*\*

20 CAR WILL SHUTTER FROM A STOP TO ACCELERATE TO SPEED.  
21 SCARY SOME TIMES THINKING YOUR GOING TO LOSE SPEED  
22 AND GET HIT. THIS HAPPENS MANY TIME, BUT BELOW YOU  
23 ONLY ALLOW FOR ONE DATE OF INCIDENT, HAPPENS ALMOST  
24 EVERYDAY I DRIVE.

### 25 **2018 Ford Focus**

- 26 r. NHTSA ID Number: 11468642, Date Reported: June 10, 2022,  
27 Incident Date October 21, 2021 Consumer Location PANAMA CITY,  
28 FL Vehicle Identification Number 1FADP3K26JL\*\*\*\*\*

Transmission control module failed, and according to Ford Service tech,  
basically "ate" the clutch. Vehicle can not go above 30 mph, and does not  
shift properly. Tech states is not included in recalls, though thinks it

1 should be included. Parts on backorder with no ETA on resolution. No  
 2 repairs able to be made. Purge Control Valve failed, causing engine to die  
 3 while fuel gauge showing 3/4 tank, repeated issue until transmission  
 4 control module failure rendered vehicle mostly unusable. Tech states is  
 not included in recalls, though thinks it should be included. Parts on  
 backorder with no ETA on resolution. No repairs able to be made.

5 s. NHTSA ID Number: 11464065, Date Reported: May 10, 2022,  
 6 Incident Date March 31, 2022 Consumer Location SAN LEANDRO,  
 7 CA Vehicle Identification Number 1FADP3K28JL\*\*\*\*

8 The contact owns a 2018 Ford Focus. The contact stated while starting the  
 9 vehicle, the vehicle was jerking. While driving approximately 30 MPH  
 10 and shifting into 3rd gear, the vehicle jerked. The check engine warning  
 11 light was illuminated. After restarting the vehicle, the vehicle operated as  
 12 designed. The vehicle was taken to the local dealer where it was diagnosed  
 13 that the clutch needed to be replaced. The vehicle was not repaired. The  
 manufacturer was notified and referred the contact to NHTSA. The failure  
 mileage was approximately 114,000.

14 t. NHTSA ID Number: 11456923, Date Reported: March 14, 2022  
 15 Consumer Location MYAKKA CITY, FL Vehicle Identification  
 16 Number 1FADP3H27JL\*\*\*\*

17 Transmission started to shift and shudder harshly. Very high RPM (up to  
 18 5000-6000 rpm) without shifting. Car failed to go into reverse of "Sport"  
 19 mode when shift level placed in that position. Car jerks and shudders upon  
 20 initial takeoff from a stop, that feels like a sudden loss of power and has  
 21 delayed acceleration. Very harsh shifting from 1st to 2nd gear that jolts  
 22 entire car and driver. The RPM stays very high if the car will go into Drive  
 and after a while the transmission overheats and a transmission  
 temperature warning is displayed. Sometimes the car won't start. Trouble  
 codes pulled are P087B and P287A.

23 u. NHTSA ID Number: 11455787, Date Reported: May 10, 2022,  
 24 Incident Date January 22, 2022 Consumer Location DERIDDER, LA  
 25 Vehicle Identification Number 1FADP3H21JL\*\*\*\*

26 Transmission control module went out in my car while on the highway.  
 27 Car decelerated and sputtered almost causing a rear end collision. I was  
 28 almost struck by a truck driving behind me.

1 v. NHTSA ID Number: 11451512, Date Reported: February 11, 2022,  
 2 Incident Date June 1, 2019 Consumer Location CLEVELAND, TN  
 3 Vehicle Identification Number 1fadb3k20jl\*\*\*\*

4 The contact owns a 2018 Ford Focus. The contact stated that while  
 5 stopped at a red light, the vehicle inadvertently moved forward. The  
 6 vehicle was taken to the dealer and Mtn. View Ford (301 E 20th St,  
 7 Chattanooga, TN 37408). The dealers had replaced the transmission on  
 8 three separate occasions; however, the failure recurred. The vehicle was  
 9 not repaired. The manufacturer was made aware of the failure and several  
 cases were opened. The manufacturer declined to buy back the vehicle  
 since it was not purchased from a Ford dealer. The failure mileage was  
 approximately 40,000.

10 w. NHTSA ID Number: 11388244, Date Reported: January 14, 2020,  
 11 Incident Date October 17, 2019 Consumer Location HOWELL, MI  
 12 Vehicle Identification Number 1FADP3H24JL\*\*\*\*

13 THE VEHICLE STUTTERS AND HESITATES WHEN TAKING OFF  
 14 OR GOING AROUND CORNERS. I HAVE PANICKED SEVERAL  
 15 TIMES WONDERING IF I WAS GOING TO GET HIT BY SOMEONE  
 16 WHEN THE VEHICLE HESITATES AND STUTTERS. IT'S SO  
 17 PRONOUNCED THAT IT FEELS LIKE THE TIRES BOUNCE. I  
 18 HAVE BEEN COMPLAINING ABOUT THIS TO TWO FORD  
 19 DEALERS AND ALSO FORD MOTOR COMPANY FOR A VERY  
 20 LONG TIME AND HAVE TAKEN IT IN 2-3 TIMES TO LOOK AT  
 THE TRANSMISSION AND WAS TOLD IT WAS NOT COVERED,  
 NOR WAS THERE A RECALL. I DO KNOW THIS IS AN ONGOING  
 ISSUE WITH THIS TRANSMISSION.

21 x. NHTSA ID Number: 11387876, Date Reported: January 13, 2021,  
 22 Incident Date January 13, 2021 Consumer Location HARTFORD,  
 23 ARVehicle Identification Number 1FADP3E20JL\*\*\*\*

24 MY BOYFRIEND GOT THIS CAR APRIL 13 OF 2020 AND ABOUT  
 25 A MONTH AND A HALF AFTER WE GOT IT IT STATT'S ACTING  
 26 UP... NOT SHOFTING OUT OF LOWER GEARS. SHUDDERING .  
 27 WHEN YOU STOP AT A STOP LIGHT FOR TOO LONG AND GO TO  
 28 TAKE OFF IT ALMOST STALLS. WE ALMOST GOT HIT BECAUSE  
 OF IT! IT SOUNDS LILE GEARS ARE GRINDING OR LIKE WE ARE  
 DRAGGING SOMETHING UNDER THE CAR. WE HAVE TAKEN IT  
 IN TWOCE TO GET CHECKED AND THE FORST GUY THAT

1 SROVE IT AROUND THE LOT SAIS SOMETHING WAS WRONG  
2 WOTH IT NUT AFTWR THEY HAD IT ON THE SHOP FOR ABOUT  
3 AN HOUR ANS A HALF THEY BRING IT BACK TO US THE  
4 SECOND TIME AND SAY NOTHING OS WRONG WOTH IT.... IT IS  
5 GETTING WORSE AND WORSE. IS STATTED OUT JUST NOT  
6 WAMTING TO SHIFT FROM SECOND GEAR NOW IT DOESNT  
7 EVEN WANNA SHIFT OUT OF FIRST MOST THE TIME. 45000  
8 MILES. THERE SHOULD BE NO ISSUES WOTH THIS CAR.

9  
10 y. NHTSA ID Number: 11378604, Date Reported: December 9, 2020,  
11 Incident Date September 6, 2019 Consumer Location TUCSON, AZ  
12 Vehicle Identification Number 1FADP3F21JL\*\*\*\*

13 I GOT THE VEHICLE ON 4/30/2019, ONE MONTH LATER, THE  
14 VEHICLE BEGAN WITH ISSUES. AFTER YOU COME TO A FULL  
15 STOP AND THEN YOU LET YOU FOOT OFF THE BRAKE AND  
16 PRESS THE ACCELERATOR TO GO FORWARD, THE CAR  
17 SHAKES / VIBRATES. I HAVE ALREADY TAKEN MY VEHICLE 3  
18 TIMES TO THE DEALERSHIP ABOUT THE SAME ISSUE, THE  
19 ISSUE DOES GET FIX BUT AFTER A MONTH, THE SAME ISSUE  
20 BEGINS AGAIN. THE DEALERSHIP TOLD ME THAT THIS  
21 PROBLEM WILL HAPPEN EVERY MONTH, I WAS NEVER TOLD  
22 ABOUT IT BEFORE I BOUGHT/FINANCE THE VEHICLE. ALSO  
23 MY VEHICLE IS NOT GETTING THE PROPER FULL MILEAGE IT  
24 SHOULD BE GETTING

25  
26 z. NHTSA ID Number: 11378480, Date Reported: January 13, 2021,  
27 Incident Date April 19, 2019 Consumer Location HOPEWELL, VA  
28 Vehicle Identification Number 1FADP3E28JL\*\*\*\*

VEHICLE IS SLOW ACCELERATING ON THE HIGHWAY  
GETTING ON AND OFF RAMPS. IT JERKS AND LAGS WHEN  
PROCEEDING AFTER A STOP. THIS HAS BEEN AN ON GOING  
PROBLEM SINCE PURCHASE. SERVICED MULTIPLE TIMES.  
PROBLEM ADDRESSED FOR ABOUT A WEEK AND THE  
JERKING ALWAYS RETURNS.

## Consumer Complaints on Third-Party Websites

98. Consumers similarly complained about the Defect in Class Vehicles on various online forums. Consumers have also posted extensively on websites dedicated to discussions of Ford's vehicles regarding the Transmission Defect in vehicles equipped with the PowerShift Transmissions. Ford has made the monitoring of consumer complaints as posted on third-party websites a part of their corporate strategy for brand management since at least 2012.<sup>11</sup>

99. The following complaints are a sampling of the many on third-party consumer websites, which Ford would have seen as part of its online brand management:

### **DPS6 Transmission-Equipped Ford Focuses**

- a. Scooter 6 December 6, 2019: My aunt's Focus with 50,000 miles started having issues. It was jerky and hesitant to shift. It started to have issues running and starting up to the point it wouldn't drive on some occasions. I always thought it was junk.
- b. RyanLee036 Aug 2, 2019: You don't have to own a DCT-equipped vehicle to notice issues. I test-drove a 2014 that has the shudder. I rode in a colleagues' DCT Focus that has the shudder. And to top it all off, the Detroit Free Press article pretty much confirms what most of us were thinking.<sup>12</sup>
- c. James B. January 14, 2021: The 2017 Ford Focus transmission problems are jerks or hard shifts. The transmission fluid needs to be replaced every 30,000 to 60,000 miles. Along with fluid changes, terrible sounds will come from the transmission. Old transmission fluid

<sup>11</sup> Read, Richard, "Taking your car complaint online? Chrysler, GM, and Ford will see it.", *Christian Science Monitor*, Aug. 21, 2012 (available at <https://www.csmonitor.com/Business/In-Gear/2012/0827/Taking-your-car-complaint-online-Chrysler-GM-and-Ford-will-see-it> (last visited June 17, 2022)).

<sup>12</sup> <https://www.focusfanatics.com/threads/all-things-dct-what-it-is-why-its-still-broken-in-2018-models-and-ways-to-fix-it.808117/page-3> (last visited June 14, 2022).



will be awful to the ear. A worn out torque converter will cause a headache. The transmission is one of the most crucial parts of the vehicle. You will come into issues at some point. The gears can become stuck. There could be jerking. Hard shifts may arise and that is no good. You might experience shudders. Delayed shifts will cause acceleration problems. The transmission could slip. If the transmission fluid leaks, that needs to be patched quickly.<sup>13</sup>

- d. Melitta Bryant May 4, 2021: My transmission went out on my 2017 Ford Focus.<sup>14</sup>
- e. E.L. October 7, 2021: Our 2017 Focus needs its 5th clutch pack at 60,000 miles...Ford has refused to pay for the repair under warranty. Do not buy any Focus or Fiesta with the "automatic" DPS6 transmission in it they are junk and you will have problems with it for the life of the vehicle. The first problem started acting up at 18,000, 2nd at 27,000, 3rd at 43,000, 4th at 56,000...now needs 5th clutch pack which Ford says is out of warranty, they deny any responsibility for their faulty design which THEIR ENGINEERS told them about.<sup>15</sup>
- f. L.C. April 30, 2021: I had to have major transmission work done on my 2017 Focus at 24,000 miles and the same work again at 28,000 miles. The dealership is more that 20 miles away and they didn't have a loaner vehicle for me while my car was being repaired.<sup>16</sup>

<sup>13</sup> <https://www.vehiclehistory.com/questions/does-the-2017-ford-focus-have-transmission-problems-9904> (last visited (June 14, 2022)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



**DPS6 Transmission-Equipped Ford Fiestas**

- g. BarnTart 3 mo. ago edited 3 mo. ago: I've driven a dct Fiesta, damn thing shudders, like the gears are binding, or stumbling<sup>17</sup>
- h. Prophage7 3 mo. ago: [F]ord's DCT on the other hand... nothing you can do about it and when it is "working" you still get neck-jerking slams into gear randomly.<sup>18</sup>
- i. Testthrowawayzz 3 mo. ago: Ford PowerShift is the worse. I never had a Nissan CVT fail on me on the freeway whereas Ford PowerShift did<sup>19</sup>
- j. Kimi 1 year ago: Loss or reverse and shudder early in acceleration.<sup>20</sup>
- k. Gary Matlock 1 year ago: Makes a noise-like gears turning-when u turn key on-no reverse but has gotward.<sup>21</sup>
- l. Patricia Johnson 19 days ago: My car is making a loud noise rattling acts like it don't want to drive forward the mechanic said that there's something loose in the transmission I have to take care of my elderly mom she's a cancer survivor can't get her back and forth to the doctor I can't go to my physical therapy and every Ford dealership in my area are booked and can't get to it until December or January what am I supposed to do only had the car a year on a set income.<sup>22</sup>

100. Ford had superior and exclusive knowledge of the Transmission Defect and knew or should have known that the defect was not known or reasonably

<sup>17</sup> [https://www.reddit.com/r/cars/comments/tsn53v/ford\\_powershift\\_dct\\_vs\\_nissanjatco\\_cvt\\_which/](https://www.reddit.com/r/cars/comments/tsn53v/ford_powershift_dct_vs_nissanjatco_cvt_which/) (last visited June 14, 2022)

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> <https://www.transmissionrepaircostguide.com/ford-fieta-transmission-problems/comment-page-2/#comments> (last visited June 14, 2022).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

1 discoverable by Plaintiffs and Class Members before they purchased or leased the  
2 Class Vehicles.

3 101. Before Plaintiffs purchased their Class Vehicles, and since 2010, Ford  
4 knew about the Transmission Defect through sources not available to consumers,  
5 including pre-release testing data, early consumer complaints to Ford and its  
6 dealers, testing conducted in response to those complaints, high failure rates and  
7 replacement part sales data, and other aggregate data from Ford dealers about the  
8 problem.

9 102. Ford is experienced in the design and manufacture of consumer  
10 vehicles. As an experienced manufacturer, Ford conducts tests, including pre-sale  
11 durability testing, on incoming components, including the engines, to verify the  
12 parts are free from defect and align with Ford's specifications.<sup>23</sup> Thus, Ford knew  
13 or should have known that the subject transmission was defective and prone to put  
14 drivers in a dangerous position due to the inherent risk of the defect. In particular,  
15 thermal testing of pre-production models revealed the Transmission Defect.

16 103. Additionally, Ford should have learned of this widespread defect from  
17 the many reports received from dealerships and from customer complaints directly  
18 to Ford. Ford's customer relations department collects and analyzes field data  
19 including, but not limited to, repair requests made at dealerships, technical reports  
20 prepared by engineers who have reviewed vehicles for which warranty coverage is  
21 being requested, parts sales reports, and warranty claims data.

22 104. Defendant's warranty department similarly analyzes and collects data  
23 submitted by its dealerships in order to identify trends in its vehicles. It is  
24 Defendant's policy that when a repair is made under warranty the dealership must

25  
26 <sup>23</sup> Akweli Parker, *How Car Testing Works*, HOWSTUFFWORKS.COM,  
27 [http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-](http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm)  
28 [testing.htm](http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm) ("The idea behind car testing is that it allows manufactures to work out  
all the kinks and potential problems of a model before it goes into full production.")  
(last visited June 6, 2022).

1 provide Ford with detailed documentation of the problem and the fix employed to  
2 correct it. Dealerships have an incentive to provide detailed information to Ford,  
3 because they will not be reimbursed for any repairs unless the justification is  
4 sufficiently detailed.

5 105. Ford service centers, independent repair shops, and consumers doing  
6 repairs themselves use Ford replacement parts that they order directly from Ford.  
7 Thus, Ford would have detailed and accurate data regarding the number and  
8 frequency of replacement part orders, information which is also exclusively within  
9 Ford's control and unavailable to Plaintiffs without discovery. The ongoing high  
10 sales of replacement transmissions and transmission components such as clutches  
11 and seals, was certainly known to Ford, and should have alerted Ford that its  
12 PowerShift Transmissions were suffering from a defect, causing shuddering,  
13 surging, slipping, failure, delayed acceleration, and stalling.

14 106. The existence of the Transmission Defect is a material fact that a  
15 reasonable consumer would consider when deciding whether to purchase or lease a  
16 Class Vehicle. Had Plaintiffs and other Class Members known of the Transmission  
17 Defect, they would have paid less for the Class Vehicles or would not have  
18 purchased or leased them.

19 107. Irrespective of all the aggregate information, both internal and  
20 external, that clearly provided Ford with knowledge that the PowerShift  
21 Transmission is dangerously defective, Ford has never disclosed to owners or  
22 prospective purchasers that there is a safety defect in the Class Vehicles. In fact,  
23 Ford intentionally and actively concealed the existence of a safety defect in the  
24 Class Vehicles.

25 108. Reasonable consumers, like Plaintiffs, reasonably expect that a  
26 vehicle's transmission is safe, will function in a manner that will not pose a safety  
27 hazard, and is free from defects. Plaintiffs and Class Members further reasonably  
28 expect that Ford will not sell or lease vehicles with known safety defects, such as

1 the Transmission Defect, and will disclose any such defects to its consumers when  
2 it learns of them. They did not expect Ford to fail to disclose the Transmission  
3 Defect to them and to continually deny the defect existed.

#### 4 **Technical Service Bulletins and Other Ford Communications**

5 109. Beginning in 2010, Ford began issuing multiple TSBs to address the  
6 defects in their PowerShift Transmissions. However, Ford never communicated the  
7 TSBs, or the information they contained, directly to the Class or any prospective  
8 buyers. Instead, Ford prepared a separate series of sanitized documents for its  
9 customers intended to induce them into believing that their kicking, bucking,  
10 shuddering vehicles were exhibiting “normal driving characteristics.”

11 110. Indeed, when owners of Ford Vehicles equipped with PowerShift  
12 Transmissions exhibiting the Transmission Defect bring their vehicles to Ford  
13 dealerships, the dealerships have often provided them with a document entitled  
14 “PowerShift 6-Speed Transmission Operating Characteristics.” Ford drafted this  
15 document and provided it to its dealers to give to customers whose vehicles were  
16 exhibiting the Transmission Defect, in an apparent attempt to induce customers into  
17 believing the problems they were experiencing were “normal driving  
18 characteristics.”

19 111. Rather than disclosing that the PowerShift transmission was defective,  
20 this document states that customers may experience “a trailer hitching feel (or a  
21 slight bumping fee)” calling this “a normal characteristic of the dry clutch-equipped  
22 manual transmission design.” Ford did not disclose in this letter that the PowerShift  
23 transmission was defective, and did not disclose the PowerShift transmission  
24 exhibits transmission slips, bucking, kicking, jerking, premature internal wear,  
25 sudden acceleration, delay in downshifts, delayed acceleration, difficulty stopping  
26 the vehicle, or transmission failure.

27 112. Beginning in 2010, Ford issued several Technical Service Bulletins  
28 (“TSBs”) to its dealers in the United States acknowledging defects in the PowerShift

1 Transmission— the same or substantially similar Transmission as that equipped in  
2 the Class Vehicles. Ford's TSB from September 2010, covering the 2011 Ford  
3 Fiesta, informs dealers of "concerns such as no engagement or intermittent no  
4 engagement in Drive or Reverse when shifting from Park to Drive or Reverse,  
5 grinding noise during engagement, and/or a check engine light with transmission  
6 control module (TCM) diagnostic trouble code ... "

7 113. Ford's TSB No. AS-21687 released on January 1, 2011, covering the  
8 2011 Fiesta with the PowerShift Transmission, informs dealers of problems with  
9 the PowerShift Transmission causing "a loss of power, hesitation, surge, or lack of  
10 throttle response while driving."

11 114. Ford's TSB No. AS-21769 from March 31, 2011, also covering the  
12 2011 Ford Fiesta, informs dealers of problems where the PowerShift Transmission  
13 "exhibit[s] a rattle/grind noise in reverse only."

14 115. Another Ford TSB, No. 11-5-13, released on May 17, 2011 (and later  
15 superseded by TSB 11-9-2 updating repair procedure) advised dealers to reprogram  
16 the transmission computer if 2011 Fiesta owners complained about "hesitation  
17 when accelerating from a low speed after coast down, harsh or late 1-2 upshift, harsh  
18 shifting during low-speed tip-in or tip-out maneuvers and/or engine r.p.m. flare  
19 when coasting to a stop."

20 116. The 2012 Focus was the subject of a Ford TSB issued in September  
21 2011, which informed dealers of transmission problems including: "RPM flare on  
22 deceleration coming to a stop, rough idle on deceleration coming to a stop,  
23 intermittent engine idle fluctuations at a stop, intermittent vehicle speed control  
24 inoperative, intermittent harsh engagement/shift...."

25 117. In March 2014, Ford released TSB No. 14-0047, which applied to the  
26 2011-2014 Fiesta and the 2012-2014 Focus and superseded earlier TSBs. This  
27 bulletin stated: "[v]ehicles equipped with a DPS6 automatic transmission may  
28 exhibit an intermittent transmission clutch shudder on light acceleration from a stop.

1 Some vehicles may or may not exhibit transmission fluid leaking from the clutch  
2 housing." The bulletin further directed technicians on an updated repair protocol.

3 118. Also, in 2014, Ford issued an extended warranty on the TCM in certain  
4 2012 Fiestas and Focuses with the PowerShift Transmission, extending coverage to  
5 10 years or 150,000 miles. This was due to electrical circuit failures in the TCM.

6 119. The 2013-2016 Focus and Fiesta, equipped with the substantially  
7 similar PowerShift Transmission equipped in the Class Vehicles, were addressed in  
8 subsequent TSBs that re-issued and superseded the earlier TSBs described above.  
9 For example, TSB No. 16-0129 was issued September 26, 2016, and addressed  
10 "intermittent concerns of loss of transmission engagement while driving,  
11 intermittent no start or a loss of power." Customers indicating that they were  
12 experiencing the above transmission problems were to have their vehicles  
13 diagnosed and repaired. This bulletin directed dealers on how to properly perform  
14 reprogramming to the TCM and clutch adaptive learning (the indicated repair for  
15 the above symptoms.)

16 120. The 2013-2016 Focus and 2013-2015 Fiesta were again addressed in  
17 TSB No. 16-0109, issued on August 16, 2016, and warning Ford dealers of  
18 "excessive transmission clutch shudder on light acceleration." This bulletin directed  
19 dealers on the proper service procedures and part lists for repairing the above  
20 problems. The recommended repairs include clutch or seal replacement, depending,  
21 with the same parts previously complained of.

22 121. On July 12, 2019, Ford released "Short-Term DPS6 Dealer Customer  
23 Handling Directions" for Ford Fiestas and Focuses, including model years 2017.  
24 Unlike typical TSBs, this bulletin was directly to all dealership departments,  
25 including new and used sales, fleet sales, finance, parts, and service. Customers  
26 indicating that they were experiencing transmission problems were to have their  
27 vehicles diagnosed and repaired. Customers who called asking questions about the  
28 PowerShift transmission were to be directed to contact Ford's Customer

Relationship Center. For diagnosing the issues with the transmission, dealerships were directed to look at previously issued TSBs and customer satisfaction programs, including 14M01, and 14M02, and 15B22. The bulletin promised an update on July 19, 2019.

122. Additionally, in July 2020, “Certain 2016 through 2017 Model Year Focus equipped with a DPS6 Automatic Transmission” were addressed in “Customer Satisfaction Program 20B23” issued to Ford dealers, which warned of customer reports of “erratic shifting, missed gear shifting, vibration, and check engine light illumination.”

123. On May 21, 2021, Ford alerted its authorized dealerships as to shift quality concerns, including skip shift events, as a result of incorrect input speed sensor A shim thickness. When consumers with 2015 to 2018 Ford Focus vehicles with the DPS6 transmission complained about shift quality, dealerships were directed to “check and verify that the [input speed sensor A] shim is 2.0 mm,” before proceeding for further diagnostics.

### **Ford Has Actively Concealed the Transmission Defect**

124. Despite its knowledge of the Transmission Defect in the Class Vehicles, Ford actively concealed the existence and nature of the defect from Plaintiffs and Class Members. Specifically, Ford failed to disclose or actively concealed at and after the time of purchase, lease, or repair:

- a. any and all known material defects or material nonconformity of the Class Vehicles, including the defects pertaining to the PowerShift Transmission;
- b. that the Class Vehicles, including their Transmissions, were not in good working order, were defective, and were not fit for their intended purposes; and
- c. that the Class Vehicles and their Transmissions were defective, despite the fact that Ford learned of such defects as early as 2010.



1           125. As discussed above, Ford monitors its customers' discussions on  
2 online forums, and actively concealed the defect by denying the existence of a  
3 defect, claiming shuddering and jerking and failed acceleration are normal  
4 conditions, and blaming the class members for the problems.

5           126. A mailing sent to customers in August 2014 for previous models which  
6 included the PowerShift Transmission extended the limited warranty on the clutch  
7 and transmission input shaft seals and transmission software calibration to seven  
8 years or 100,000 miles. The mailing stated that only customers experiencing  
9 "excessive transmission clutch shudder on light acceleration" should take their  
10 vehicles to a dealership for repair. However, an insert also described the following  
11 as "Normal Operating Characteristics:" "mechanical noises after the engine is  
12 turned off, after the driver door is opened and during some transmission shifting  
13 events," "firm gearshifts when moving the accelerator pedal back and forth  
14 quickly," and "slight vibrations [] when accelerating the vehicle from low speeds."  
15 Discovery will show that these statements were also given to Class Members who  
16 inquired about shifting issues or vibrations experienced in their Class Vehicles.

17           127. When consumers present their Class Vehicles to an authorized Ford  
18 dealer for diagnosis and repair, Ford refuses to honor the warranty, telling the  
19 customers that the condition is normal or else providing ineffective and incomplete  
20 repairs.

21           128. Ford even told its own employees that effects of the Transmission  
22 Defect, including shuddering and slipping, were normal. As described by one  
23 production worker in the Michigan Assembly Plant, "As soon as you'd drive those  
24 cars off the line, you'd feel the shuddering...We were always told that's normal.  
25 The slipping is normal."

26           129. Despite telling Plaintiffs and Class Members that the PowerShift  
27 Transmission was working normally, Ford went after the transmission's designer,  
28 Getrag, demanding that the supplier reimburse Ford for the transmission's failures.

1 Ultimately, Getrag paid Ford at least \$50 million to release the supplier from claims  
2 related to the PowerShift Transmission.<sup>24</sup>

3 130. Accordingly, despite Ford's knowledge of the Transmission Defect,  
4 Ford has caused Class Members to expend money at its dealerships to diagnose,  
5 repair, or replace the Class Vehicles' Transmissions and components, once the time  
6 limitations have run on the bumper-to-bumper warranty.

7 **Ford Unjustly Retained Substantial Benefits**

8 131. Ford unlawfully failed to disclose the alleged Transmission Defect to  
9 induce them and other putative Class Members to purchase or lease the Class  
10 Vehicles.

11 132. Plaintiffs further allege that Ford thus engaged in deceptive acts or  
12 practices pertaining to all transactions involving the Class Vehicles.

13 133. As discussed above therefore, Plaintiffs allege that Ford unlawfully  
14 induced them to purchase their respective Class Vehicles by concealing and/or  
15 omitting a material fact (the Transmission Defect) and that Plaintiffs would have  
16 paid less for the Class Vehicles, or not purchased them at all, had they known of the  
17 Transmission Defect.

18 134. Accordingly, Ford's ill-gotten gains—benefits accrued in the form of  
19 increased sales and profits resulting from the material concealment and omissions  
20 that did and will likely continue to deceive consumers—should be disgorged.

21  
22  
23  
24  
25  
26  
27 <sup>24</sup> See Ford knew Focus, Fiesta models had flawed transmission, sold them  
28 anyway, DETROIT FREE PRESS (July 11, 2019), <https://www.freep.com/in-depth/money/cars/ford/2019/07/11/ford-focus-fieta-transmission-defect/1671198001/> (last visited June 13, 2022).

1                   **The Agency Relationship Between Ford and its Network of Authorized**  
2   **Dealerships**

3           135. Defendant enters into agreements with its nationwide network of  
4 authorized dealerships to fulfill Defendant's obligations under the warranties it  
5 provides directly to consumers as well as to provide repairs under recalls. These  
6 agreements require a dealership to follow the rules and policies of Ford in all aspects  
7 of diagnosing, repairing, maintaining, and servicing Ford vehicles, as well as selling  
8 only Ford-approved parts for the vehicles, for reimbursement by Ford.

9           136. Because Plaintiffs and members of the Class are third-party  
10 beneficiaries of the manufacturer-dealership agreements which create the implied  
11 warranty, they may avail themselves of the implied warranty and allow consumers  
12 to seek warranty and recall services locally. This is true because third-party  
13 beneficiaries to contracts between other parties that create an implied warranty of  
14 merchantability may avail themselves of the implied warranty. *See In re Toyota*  
15 *Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*,  
16 754 F. Supp. 2d 1145, 1185 (C.D. Cal. 2010).

17           137. Further, Plaintiffs and each of the members of the Class are the  
18 intended beneficiaries of Defendant's express and implied warranties. The dealers  
19 were not intended to be the ultimate consumers of the Class Vehicles, and they have  
20 no rights under the warranty agreements provided by Defendant. Defendant's  
21 warranties were designed for and intended to benefit the consumers only. The  
22 consumers are the true intended beneficiaries of Defendant's express and implied  
23 warranties, and the consumers may therefore avail themselves of those warranties.

24           138. Defendant issued the express warranties to the Plaintiffs and the Class  
25 members. Defendant also developed and disseminated the owner's manual and  
26 warranty booklets, advertisements, and other promotional materials relating to the  
27 Class Vehicles. Defendant also is responsible for the content of the Moroney  
28 Stickers on Defendant-branded vehicles.

1           139. In repairing Ford-branded vehicles, Defendant acts through numerous  
2 authorized dealers who act, and represent themselves to the public, as exclusive  
3 Defendant representatives and agents. That the dealers act as Defendant's agents is  
4 demonstrated by the following facts:

- 5           a. The authorized Ford dealerships complete all service and repair  
6 according to Defendant's instructions, which Defendant issues to its  
7 authorized dealerships through service manuals, technical service  
8 bulletins ("TSBs"), and other documents, often only accessible via  
9 Defendant's proprietary systems and tools, including the Ford  
10 diagnostic scan tool referenced on many TSBs such as the Ford  
11 Integrated Diagnostic System and Ford J2534 Diagnostic Software;
- 12           b. Consumers are able to receive services under Defendant's issued New  
13 Vehicle Limited Warranty only at Defendant's authorized dealerships,  
14 and they are able to receive these services because of the agreements  
15 between Defendant and the authorized dealers. These agreements  
16 provide Defendant with a significant amount of control over the  
17 actions of the authorized dealerships;
- 18           c. The warranties provided by Defendant for the defective vehicles direct  
19 consumers to take their vehicles to authorized dealerships for repairs  
20 or services;
- 21           d. Defendant controls the way in which its authorized dealers can respond  
22 to complaints and inquiries concerning defective vehicles, and the  
23 dealerships are able to perform repairs under warranty only with  
24 Defendant's authorization;
- 25           e. Defendant has entered into agreements and understandings with its  
26 authorized dealers pursuant to which it authorizes and exercises  
27 substantial control over the operations of its dealers and the dealers'  
28 interaction with the public;

- 1 f. Defendant implemented its express and implied warranties as they  
2 relate to the defects alleged herein by instructing authorized Defendant  
3 dealerships to address complaints of the Transmission Defect by  
4 prescribing and implementing the relevant TSBs cited herein; and  
5 g. Ford's authorized dealerships are able to bind Ford into the terms of  
6 the express warranties by selling vehicles to the public, by reviewing  
7 the quality of used Ford vehicles and certifying their worthiness to  
8 receive Ford's Certified Pre-Owned Warranties.

9 140. Indeed, Ford's warranty booklets make it abundantly clear that Ford's  
10 authorized dealerships are Ford's agents so that consumers may receive repairs from  
11 Ford under the warranties it provides directly to consumers such as Plaintiffs. The  
12 booklets, which are plainly written for the consumers, not the dealerships, tell the  
13 consumers repeatedly to seek repairs and assistance at its "your selling dealer." For  
14 example, the booklets state, that "[w]hen you need warranty repairs, your selling  
15 dealer would like you to return to it for that service, but you may also take your  
16 vehicle to another Ford Motor Company dealership authorized for warranty  
17 repairs." The booklets further state that "[y]our Ford or Lincoln dealership, or Ford  
18 or Lincoln Auto Care Service Center, has factory-trained technicians who can  
19 perform the required maintenance using genuine Ford parts."

20 141. The booklets further state that "[d]uring the Bumper to Bumper  
21 Warranty period, dealers may receive instructions to provide no-cost, service-type  
22 improvements – not originally included in your Owner's Manual – intended to  
23 increase your overall satisfaction with your vehicle." As such, authorized  
24 dealerships are not only Ford's agents to perform Ford's promised services under  
25 the warranties provided by Ford directly to the consumer, and are Ford's agents to  
26 provide "improvements" to Plaintiffs' and Class members' vehicles at Ford's  
27 direction.  
28

1           **TOLLING OF THE STATUTE OF LIMITATIONS AND ESTOPPEL**

2           142. Any applicable statute of limitations has been tolled by Defendant's  
3 knowing and active concealment of the Transmission Defect and misrepresentations  
4 and omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and  
5 members of the Class were deceived regarding the Class Vehicles and could not  
6 reasonably discover the Defect or Defendant's deception with respect to the Defect.  
7 Defendant and its agents continue to deny the existence and extent of the Defect,  
8 even when questioned by Plaintiffs and members of the Class.

9           143. Plaintiffs and members of the Class did not discover and did not know  
10 of any facts that would have caused a reasonable person to suspect that the  
11 Defendant was concealing a defect and/or the Class Vehicles contained the  
12 Transmission Defect and the corresponding safety risk. As alleged herein, the  
13 existence of the Transmission Defect was material to Plaintiffs and members of the  
14 Class at all relevant times. Within the time period of any applicable statutes of  
15 limitations, Plaintiffs and members of the Class could not have discovered through  
16 the exercise of reasonable diligence the existence of the Defect or that the Defendant  
17 was concealing the Defect.

18           144. At all times, Defendant is and was under a continuous duty to disclose  
19 to Plaintiffs and members of the Class the true standard, quality, and grade of the  
20 Class Vehicles and to disclose the Transmission Defect and corresponding safety  
21 risk due to their exclusive and superior knowledge of the existence and extent of the  
22 Transmission Defect in Class Vehicles.

23           145. Defendant knowingly, actively, and affirmatively concealed the facts  
24 alleged herein. Plaintiffs and members of the Class reasonably relied on  
25 Defendant's knowing, active, and affirmative concealment.

26           146. For these reasons, all applicable statutes of limitation have been tolled  
27 based on the discovery rule and Defendant's fraudulent concealment, and Defendant  
28 is estopped from relying on any statutes of limitations in defense of this action.

## CLASS ACTION ALLEGATIONS

147. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

148. The Classes are defined as:

**Nationwide Class:** All persons and entities in the United States who purchased or leased a Class Vehicle (the “Nationwide Class” or “Class”).

**Tennessee Sub-Class:** All individuals who purchased or leased any Class Vehicle in the State of Tennessee.

**Florida Sub-Class:** All individuals who purchased or leased any Class Vehicle in the State of Florida.

**Texas Sub-Class:** All individuals who purchased or leased any Class Vehicle in the State of Texas.

**Nebraska Sub-Class:** All individuals who purchased or leased any Class Vehicle in the State of Nebraska.

149. Excluded from the Class are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge’s staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserves the right to amend the Class definitions if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

150. **Numerosity:** Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and



1 to the Court. The Class Members are readily identifiable from information and  
2 records in Defendant's possession, custody, or control, as well as from records kept  
3 by the Department of Motor Vehicles.

4 151. Typicality: Plaintiffs' claims are typical of the claims of the Class in  
5 that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle  
6 designed, manufactured, and distributed by Ford. The representative Plaintiffs, like  
7 all Class Members, have been damaged by Defendant's misconduct in that they  
8 have incurred or will incur the cost of repairing or replacing the defective  
9 Transmission and/or other damaged components of the Transmission. Further, the  
10 factual bases of Ford's misconduct are common to all Class Members and represent  
11 a common thread resulting in injury to the Class.

12 152. Commonality: There are numerous questions of law and fact common  
13 to Plaintiffs and the Class that predominate over any question affecting Class  
14 Members individually. These common legal and factual issues include the  
15 following:

- 16 a. Whether Class Vehicles suffer from defects relating to the  
17 Transmission;
- 18 b. Whether the defects relating to the Transmission constitute an  
19 unreasonable safety risk;
- 20 c. Whether Defendant knows about the defects pertaining to the  
21 Transmission and, if so, how long Defendant has known of the defect;
- 22 d. Whether the defective nature of the Transmission constitutes a material  
23 fact;
- 24 e. Whether Defendant has a duty to disclose the defective nature of the  
25 Transmission to Plaintiffs and Class Members;
- 26 f. Whether Plaintiffs and the other Class Members are entitled to  
27 equitable relief, including a preliminary and/or permanent injunction;
- 28

- 1 g. Whether Defendant knew or reasonably should have known of the  
2 defects pertaining to the Transmission before it sold and leased Class  
3 Vehicles to Class Members;
- 4 h. Whether Defendant should be declared financially responsible for  
5 notifying the Class Members of problems with the Class Vehicles and  
6 for the costs and expenses of repairing and replacing the defective  
7 Transmission;
- 8 i. Whether Defendant is obligated to inform Class Members of their right  
9 to seek reimbursement for having paid to diagnose, repair, or replace  
10 their defective Transmission;
- 11 j. Whether Defendant breached the implied warranty of merchantability  
12 pursuant to the Magnuson-Moss Warranty Act; and
- 13 k. Whether Defendant breached written warranties pursuant to the  
14 Magnuson-Moss Warranty Act.

15 153. Adequate Representation: Plaintiffs will fairly and adequately protect  
16 the interests of the Class Members. Plaintiffs have retained attorneys experienced  
17 in the prosecution of class actions, including consumer and product defect class  
18 actions, and they intend to prosecute this action vigorously.

19 154. Predominance and Superiority: Plaintiffs and Class Members have all  
20 suffered and will continue to suffer harm and damages as a result of Defendant's  
21 unlawful and wrongful conduct. A class action is superior to other available  
22 methods for the fair and efficient adjudication of the controversy. Absent a class  
23 action, most Class Members would likely find the cost of litigating their claims  
24 prohibitively high and would therefore have no effective remedy. Because of the  
25 relatively small size of the individual Class Members' claims, it is likely that only  
26 a few Class Members could afford to seek legal redress for Defendant's misconduct.  
27 Absent a class action, Class Members will continue to incur damages, and  
28 Defendant's misconduct will continue without remedy or relief. Class treatment of

1 common questions of law and fact would also be a superior method to multiple  
 2 individual actions or piecemeal litigation in that it will conserve the resources of the  
 3 courts and the litigants and promote consistency and efficiency of adjudication.

4  
 5 **FIRST CAUSE OF ACTION**  
 6 **(Breach of Express Warranty)**  
 7 **(On Behalf of the Class and the Sub-Classes)**

8 155. Plaintiffs incorporate by reference the allegations contained in the  
 9 preceding paragraphs of this Complaint.

10 156. Plaintiffs bring this claim individually and on behalf of the members  
 11 of the Class and Sub-Classes.

12 157. Ford is a “merchant” as defined under the Uniform Commercial Code  
 13 (UCC).

14 158. The Class Vehicles are “goods” as defined under the UCC.

15 159. Ford provided a New Vehicle Limited Warranty (“NVLW”) that  
 16 expressly warranted Ford would repair any defects in materials or workmanship free  
 17 of charge during the applicable warranty periods.

18 160. Plaintiffs and Class Members experienced the Transmission Defect  
 19 within the warranty period.

20 161. Ford breached its warranty by failing to provide an adequate repair  
 21 when Plaintiffs and the Class Members presented their Class Vehicles to authorized  
 22 Ford dealers for repair of the Transmission Defect.

23 162. The warranty formed the basis of the bargain that was reached when  
 24 Plaintiffs and Class Members purchased or leased their Class Vehicles.

25 163. As a result of Ford’s breach of its express warranty, Plaintiffs and Class  
 26 Members have suffered economic damages including, but not limited to, the loss of  
 27 the benefit of their bargain, loss of vehicle use, diminished value, substantial loss in  
 28 value and resale value, out-of-pocket expenses for maintenance and service that  
 they otherwise would not have incurred but for the Transmission Defect.

1           164. Plaintiffs and members of the Class have had sufficient direct dealings  
2 with either Ford or its agents (*i.e.*, dealerships and technical support) to establish  
3 privity of contract between Ford, on one hand, and Plaintiffs and each of the other  
4 Class Members on the other hand. Nonetheless, privity is not required here because  
5 Plaintiffs and each of the other Class members are intended third-party beneficiaries  
6 of contracts between Ford and its distributors and dealers, and specifically, of Ford's  
7 express warranties, including the NVLW, the Powertrain Warranties, and any  
8 warranties provided with certified pre-owned vehicles. The dealers were not  
9 intended to be the ultimate consumers of the Class Vehicles and have rights under  
10 the warranty agreements provided with the Class Vehicles; the warranty agreements  
11 were designed for and intended to benefit the consumer only.

12           165. Any attempt by Defendant to disclaim or limit recovery to the terms of  
13 the express warranty is unconscionable and unenforceable here. Specifically, the  
14 warranty limitation is unenforceable because Defendant knowingly sold or leased  
15 defective products without informing consumers about the Transmission Defect.  
16 The time limits are unconscionable and inadequate to protect Plaintiffs and  
17 members of the Class. Among other things, Plaintiffs and members of the Class did  
18 not determine these time limitations and/or did not know of other limitations not  
19 appearing in the text of the warranties, the terms of which were drafted by  
20 Defendant and unreasonably favored Defendant. A gross disparity in bargaining  
21 power and knowledge of the extent, severity, and safety risk of the Transmission  
22 Defect existed between Defendant and members of the Class.

23           166. Further, the limited warranty promising to repair and/or correct a  
24 manufacturing or workmanship defect fails of its essential purpose because the  
25 contractual remedy is insufficient to make Plaintiffs and the members of the Class  
26 whole, because on information and belief, Defendant has failed and/or has refused  
27 to adequately provide the promised remedies, *i.e.*, a permanent repair, within a  
28 reasonable time.

1           167. Plaintiffs and Class Members were not required to notify Ford of the  
2 breach or were not required to do so because affording Ford a reasonable  
3 opportunity to cure its breach of written warranty would have been futile. Ford was  
4 also on notice of the Transmission Defect from its own pre-production testing, from  
5 the early complaints, service requests, and replacement part orders it received from  
6 its network of dealerships and Class Members, from repairs and/or replacements of  
7 the Transmission and other related system components under warranty, and from  
8 other internal sources, including communications and complaints from its network  
9 of dealerships.

10           168. Plaintiffs and Class Members provided Ford with notice of the issues  
11 complained of herein within a reasonable time by presenting their Class Vehicles  
12 to authorized Ford dealers for repair of the Transmission Defect. Ford also  
13 received notice of the issues complained of herein by numerous complaints made  
14 directly to Ford and online, and from internal sources. Ford also received notice  
15 of the express warranty claims of Plaintiffs and the Class on DATE.

16           169. Defendant has been afforded a reasonable opportunity to cure its  
17 breach, including when Plaintiffs and Class Members brought their vehicles in for  
18 diagnoses and repair of the Transmissions.

19           170. Plaintiffs and Class Members have complied with all obligations under  
20 the warranty or otherwise have been excused from performance of such obligations  
21 as a result of Ford's conduct described herein.

22           171. In its capacity as a supplier and/or warrantor, and by the conduct  
23 described herein, any attempt by Ford to limit its express warranty in a manner that  
24 would exclude or limit coverage for the Transmission Defect, including benefit-of-  
25 the-bargain, incidental, or consequential damages, would cause the warranty to fail  
26 of its essential purpose. Plaintiffs and Class Members have presented their Class  
27 Vehicles to Ford's authorized dealers on numerous occasions and Ford has failed to  
28 remedy the Transmission Defect. As a result, Plaintiffs and Class Members are left

1 with defective vehicles that pose a safety hazard and do not function as intended  
2 and, therefore, have been deprived of the benefit of their bargains.

3 172. In its capacity as a supplier and/or warrantor, and by the conduct  
4 described herein, any attempt by Ford to limit its express warranty in a manner  
5 that would exclude or limit coverage for the Transmission Defect would be  
6 unconscionable. Ford's warranties were adhesive and did not permit negotiations.  
7 Ford possessed superior knowledge of the Transmission Defect, which is a latent  
8 defect, prior to offering Class Vehicles for sale. Ford concealed and did not disclose  
9 the Transmission Defect, and Ford did not remedy the Transmission Defect prior  
10 to sale or lease (or afterward).

## 11 **SECOND CAUSE OF ACTION**

12 **(Breach of Written Warranty under the Magnuson-Moss Warranty Act)**

13 **(15 U.S.C. § 2303 *et seq.*)**

14 **(On Behalf of the Class and the Sub-Classes)**

15 173. Plaintiffs incorporate by reference the allegations contained in the  
16 preceding paragraphs of this Complaint.

17 174. Plaintiffs bring this cause of action on behalf of themselves and on  
18 behalf of the Class and the Sub-Classes against Defendant.

19 175. Defendant provided all purchasers and lessees of the Class Vehicles  
20 with an express warranty described *infra*, which became a material part of the  
21 bargain. Accordingly, Defendant's express warranty is an express warranty under  
22 state law.

23 176. The Transmission and its component parts were manufactured and/or  
24 installed in the Class Vehicles by Defendant and are covered by the express  
25 warranty.

26 177. In a section entitled "What is Covered," Defendant's express warranty  
27 provides, in relevant part, that "authorized Ford Motor Company dealers will,  
28 without charge, repair, replace, or adjust all parts on your vehicle that malfunction

1 or fail during normal use during the applicable coverage period due to a  
2 manufacturing defect in factory-supplied materials or factory workmanship.”

3 178. According to Ford, the “bumper to bumper” NVLW “lasts for three  
4 years - unless you drive more than 36,000 miles before three years elapse. In that  
5 case, your coverage ends at 36,000 miles.”

6 179. Defendant breached the express warranties by selling and leasing Class  
7 Vehicles with the Transmission Defect, requiring repair or replacement within the  
8 warranty period, and refusing to honor the express warranty by repairing or  
9 replacing, free of charge, the Transmission and its component parts, and instead,  
10 replacing the defective Transmission and its components with equally defective  
11 Transmissions and components. By simply replacing Plaintiffs’ and Class  
12 Members’ defective Transmissions and components with similarly defective parts,  
13 Ford has failed to “repair” the defects as alleged herein.

14 180. Plaintiffs and the Class were not required to notify Ford of the breach  
15 or were excused from doing so because affording Ford a reasonable opportunity to  
16 cure its breach of written warranty would have been futile.

17 181. Plaintiffs and the Class provided Ford with notice of the issues  
18 complained of herein within a reasonable time by presenting their Class Vehicles to  
19 authorized Ford dealers for repair of the Transmission Defect. Ford also had notice  
20 of the issues complained of herein by numerous complaints made directly to Ford  
21 and online, and from internal sources. Ford also received notice of the warranty  
22 claims of Plaintiffs and the Class on April 27, 2022.

23 182. Defendant has been afforded a reasonable opportunity to cure its  
24 breach, including when Plaintiffs and Class Members brought their vehicles in for  
25 diagnoses and repair of the Transmission system.

26 183. As a direct and proximate cause of Defendant’s breach, Plaintiffs and  
27 the other Class Members have suffered, and continue to suffer, damages, including  
28 economic damages at the point of sale or lease. Additionally, Plaintiffs and the other



1 Class Members have incurred or will incur economic damages at the point of repair  
2 in the form of the cost of repair.

3 184. Plaintiffs and the other Class Members are entitled to legal and  
4 equitable relief against Defendant, including actual damages, consequential  
5 damages, specific performance, attorneys' fees, costs of suit, and other relief as  
6 appropriate.

7  
8 **THIRD CAUSE OF ACTION**  
9 **(Breach of Implied Warranty of Merchantability)**  
10 **(On Behalf of the Class and Sub-Classes)**

11 185. Plaintiffs incorporate by reference the allegations contained in the  
12 preceding paragraphs of this Complaint.

13 186. Plaintiffs bring this cause of action on behalf of themselves and the  
14 members of the Class and the Sub-Classes.

15 187. Ford is a "merchant" as defined under the UCC.

16 188. The Class Vehicles are "goods" as defined under the UCC.

17 189. A warranty that the Class Vehicles were in merchantable quality and  
18 condition arises by operation of law with respect to transactions for the purchase  
19 and lease of Class Vehicles. Defendant provided Plaintiffs and Class Members with  
20 an implied warranty that the Class Vehicles and their components and parts are  
21 merchantable and fit for the ordinary purposes for which they were sold.

22 190. However, the Class Vehicles are not fit for their ordinary purpose of  
23 providing reasonably reliable and safe transportation because, *inter alia*, the Class  
24 Vehicles suffered from the inherent Transmission Defect at the time of sale and  
25 thereafter.

26 191. Defendant's actions, as complained of herein, breached the implied  
27 warranty that the Class Vehicles were of merchantable quality and fit for such use.

28 192. Privity is not required here because Plaintiffs and members of the  
Class are intended third-party beneficiaries of contracts between GM and its

1 distributors and dealers, and specifically, of Ford's express warranties, including  
2 the NVLW, the Powertrain Warranties, and any warranties provided with certified  
3 pre-owned vehicles. The dealers were not intended to be the ultimate consumers  
4 of the Class Vehicles and have rights under the warranty agreements provided with  
5 the Class Vehicles; the warranty agreements were designed for and intended to  
6 benefit the consumer only.

7 193. Plaintiffs and the Class were not required to notify Ford of the breach  
8 or were excused from doing so because affording Ford a reasonable opportunity to  
9 cure its breach of implied warranty would have been futile.

10 194. Ford also had notice of the issues complained of herein by the  
11 presentation of Plaintiffs' Class Vehicles to authorized Ford dealers for repair of the  
12 Transmission Defect, numerous complaints made directly to Ford and online, and  
13 from internal sources. Ford also received notice of the implied warranty claims of  
14 Plaintiffs and the Class on April 27, 2022.

15 195. Defendant has been afforded a reasonable opportunity to cure its  
16 breach, including when Plaintiffs and Class Members brought their vehicles in for  
17 diagnoses and repair of the Transmission system.

18 196. Because Plaintiffs purchased their vehicles from authorized Ford  
19 dealers, Plaintiffs are in privity with Ford since an agency relationship establishes  
20 privity for purposes of the breach of implied warranty claims. In addition, privity is  
21 not required because Plaintiffs are intended third-party beneficiaries of Defendant's  
22 implied warranties.

23 197. As a result of Defendant's breach of the applicable implied warranties,  
24 owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money,  
25 property, and/or value of their Class Vehicles.

**FOURTH CAUSE OF ACTION**

**(Breach of Implied Warranty under the Magnuson-Moss Warranty Act)  
(15 U.S.C. § 2303 *et seq.*)**

**(On Behalf of the Class and the Sub-Classes)**

198. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

199. Plaintiffs bring this cause of action on behalf of themselves and the Class and the Sub-Classes against Defendant.

200. The Class Vehicles are a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

201. Plaintiffs and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

202. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

203. Ford impliedly warranted that the Class Vehicles were of merchantable quality and fit for use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their Transmissions that were manufactured, supplied, distributed, and/or sold by Ford would provide safe and reliable transportation; and (ii) a warranty that the Class Vehicles and their Transmissions would be fit for their intended use while the Class Vehicles were being operated.

204. Contrary to the applicable implied warranties, the Class Vehicles and their Transmission at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles – their Transmissions – are defective. Accordingly, the Class Vehicles are not fit for their intended use.

205. Defendant’s breach of implied warranties has deprived Plaintiffs and Class Members of the benefit of their bargain.

206. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the sum or value of \$25.00. In addition, the amount in controversy meets

1 or exceeds the sum or value of \$50,000.00 (exclusive of interests and costs)  
2 computed based on all claims to be determined in this suit.

3 207. Plaintiffs and the Class were not required to notify Ford of the breach  
4 or were excused from doing so because affording Ford a reasonable opportunity to  
5 cure its breach have been futile.

6 208. Ford also had notice of the issues complained of herein by the  
7 presentation of Plaintiffs' Class Vehicles to authorized Ford dealers for repair of the  
8 Transmission Defect, numerous complaints made directly to Ford and online, and  
9 from internal sources. Ford also received notice of the implied warranty claims of  
10 Plaintiffs and the Class on April 27, 2022.

11 209. Defendant has been afforded a reasonable opportunity to cure its  
12 breach, including when Plaintiffs and Class Members brought their vehicles in for  
13 diagnoses and repair of the Transmission.

14 210. As a direct and proximate cause of Defendant's breach of implied  
15 warranties, Plaintiffs and Class Members sustained and incurred damages and other  
16 losses in an amount to be determined at trial. Defendant's conduct damaged  
17 Plaintiffs and Class Members, who are entitled to recover actual damages,  
18 consequential damages, specific performance, diminution in value, costs, attorneys'  
19 fees, and/or other relief as appropriate.

20 211. As a result of Defendant's violations of the Magnuson-Moss Warranty  
21 Act as alleged herein, Plaintiffs and Class Members have incurred damages.  
22  
23  
24  
25  
26  
27  
28

**FIFTH CAUSE OF ACTION**  
**(Breach of Express Warranty)**  
**(TENN. CODE §§ 47-2-313 AND 47-2A-210 )**  
**(On behalf of the Tennessee Sub-Class)**

212. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

213. Plaintiff Margaret Barnes (“Tennessee Plaintiff”) brings this count on behalf of herself and the Tennessee Sub-Class against Defendant.

214. Ford is and was at all relevant times a “merchant” with respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and “seller” of motor vehicles under § 47-2-103(1)(d).

215. With respect to leases, Ford is and was at all relevant times a “lessor” of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

216. The Class Vehicles are and were at all relevant times “goods” within the meaning of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

217. The Powershift Transmissions were manufactured and/or installed in the Class Vehicles by Defendant and are covered by the express warranty.

218. Ford provided all purchasers and lessees of the Class Vehicles with an express warranty described herein, which became a material part of the bargain. Accordingly, Ford’s express warranty is an express warranty under Tennessee state law.

219. In a section entitled “What is Covered,” Defendant’s express warranty provides, in relevant part, that “authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.”

220. According to Ford, the “bumper to bumper” NVLW “lasts for three years - unless you drive more than 36,000 miles before three years elapse. In that case, your coverage ends at 36,000 miles,” if not longer.

1           221. Defendant's NVLW and other warranties regarding the Class Vehicles  
2 formed a basis of the bargain that was breached when Tennessee Plaintiff and  
3 members of the Tennessee Sub-Class purchased or leased the Class Vehicles with  
4 the defective Transmission and/or related components.

5           222. Tennessee Plaintiff and members of the Tennessee Sub-Class  
6 experienced defects within the warranty period. Despite the existence of the NVLW,  
7 Defendant failed to inform Tennessee Plaintiff and members of the Tennessee Sub-  
8 Class that the Class Vehicles were equipped with defective transmissions and  
9 related components. When providing repairs under the express warranty, these  
10 repairs were ineffective and incomplete and did not provide a permanent repair for  
11 the Transmission Defect.

12           223. Ford breached the express warranty through the acts and omissions  
13 described above, including by promising to repair or adjust defects in materials or  
14 workmanship of any part supplied by Defendant and then failing to do so. Defendant  
15 has not repaired or adjusted, and has been unable to repair or adjust, the Class  
16 Vehicles' materials and workmanship defects.

17           224. Privity is not required here because Tennessee Plaintiff and members  
18 of the Tennessee Sub-Class are intended third-party beneficiaries of contracts  
19 between Ford and its distributors and dealers, and specifically, of Ford's express  
20 warranties, including the NVLW, the Powertrain Warranties, and any warranties  
21 provided with certified pre-owned vehicles. The dealers were not intended to be  
22 ultimate consumers of the Class Vehicles and have rights under the warranty  
23 agreements provided with the Class Vehicles; the warranty agreements were  
24 designed for and intended to benefit the consumer only.

25           225. Any attempt by Ford to disclaim or limit recovery to the terms of the  
26 express warranty is unconscionable and unenforceable here. Specifically, the  
27 warranty limitation is unenforceable because Ford knowingly sold or leased  
28 defective products without informing consumers about the Transmission Defect.

1 The time limits are unconscionable and inadequate to protect Tennessee Plaintiff  
2 and the members of the Tennessee Sub-Class. Among other things, Tennessee  
3 Plaintiff and members of the Tennessee Sub-Class did not determine these time  
4 limitations and/or did not know of other limitations not appearing in the text of the  
5 warranties, the terms of which were drafted by Ford and unreasonable favored Ford.  
6 A gross disparity in bargaining power and knowledge of the extent, severity, and  
7 safety risk of the Transmission Defect existed between Ford and members of the  
8 Tennessee Sub-Class.

9 226. Further, the limited warranty promising to repair and/or correct a  
10 manufacturing or workmanship defect fails of its essential purpose because the  
11 contractual remedy is insufficient to make Tennessee Plaintiff and the members of  
12 the Tennessee Sub-Class whole, because Ford has failed and/or has refused to  
13 adequately provide the promised remedies, *i.e.*, a permanent repair, within a  
14 reasonable time.

15 227. Tennessee Plaintiff was not required to notify Ford of the breach  
16 because affording Ford a reasonable opportunity to cure its breach of written  
17 warranty would have been futile. Ford was also on notice of the Transmission  
18 Defect from the complaints and service requests it received from Class Members,  
19 including those formal complaints submitted to NHTSA, and through other internal  
20 sources.

21 228. Nonetheless, Tennessee Plaintiff and members of the Tennessee Sub-  
22 Class provided notice to Ford of the breach of express warranties when they took  
23 their vehicles to Ford-authorized providers of warranty repairs. Tennessee Plaintiff  
24 also provided notice to Ford of its breach of express warranty by letter dated April  
25 27, 2022.

26 229. As a result of Ford's breach of the applicable express warranties,  
27 owners and/or lessees of the Class Vehicles suffered, and continue to suffer, an  
28 ascertainable loss of money, property, and/or value of their Class Vehicles.



230. As a direct and proximate result of Defendant's breach of express warranties, Tennessee Plaintiff and members of the Tennessee Sub-Class have been damaged in an amount to be determined at trial.

231. As a result of Ford's breach of the express warranty, Tennessee Plaintiff and Tennessee Sub-Class Members are entitled to legal and equitable relief against Ford, including actual damages, specific performance, attorney's fees, costs of suit, and other relief as appropriate.

### **SIXTH CAUSE OF ACTION**

#### **(Breach of the Implied Warranty of Merchantability) (TENN. CODE §§ 47-2-314 AND 47-2A-212) (On behalf of the Tennessee Sub-Class)**

232. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

233. Tennessee Plaintiff brings this count on behalf of herself and Tennessee Sub-Class against Defendant.

234. Ford is and was at all relevant times a "merchant" with respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and "seller" of motor vehicles under § 47-2-103(1)(d).

235. With respect to leases, Ford is and was at all relevant times a "lessor" of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

236. The Class Vehicles are and were at all relevant times "goods" within the meaning of Tenn. Code §§ 47-2-105(1) AND 47-2A-103(1)(h).

237. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under Tenn. Code §§ 47-2-314 and 47-2A-212.

238. Ford knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased. Ford directly sold and marketed Class Vehicles to customers through authorized dealers, like those from whom Tennessee

1 Plaintiff and members of the Tennessee Sub-Class bought or leased their vehicles,  
2 for the intended purpose of consumers purchasing the vehicles. Ford knew that the  
3 Class Vehicles would and did pass unchanged from the authorized dealers to  
4 Tennessee Plaintiff and members of the Tennessee Sub-Class, with no modification  
5 to the defective Class Vehicles.

6 239. Ford provided Tennessee Plaintiff and members of the Tennessee Sub-  
7 Class with an implied warranty that the Class Vehicles and their components and  
8 parts are merchantable and fit for the ordinary purposes for which they were sold.  
9 However, the Class Vehicles are not fit for their ordinary purpose of providing  
10 reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles  
11 and their Transmissions suffered from an inherent defect at the time of sale and  
12 thereafter and are not fit for their particular purpose of providing safe and reliable  
13 transportation.

14 240. This implied warranty included, among other things: (i) a warranty that  
15 the Class Vehicles that were manufactured, supplied, distributed, and/or sold by  
16 Ford were safe and reliable for providing transportation; and (ii) a warranty that the  
17 Class Vehicles would be fit for their intended use while the Class Vehicles were  
18 being operated.

19 241. Contrary to the applicable implied warranties, the Class Vehicles at the  
20 time of sale and thereafter were not fit for their ordinary and intended purpose of  
21 providing Plaintiffs and Class Members with reliable, durable, and safe  
22 transportation. Instead, the Class Vehicles were and are defective at the time of sale  
23 or lease and thereafter as more fully described above. Ford knew of this defect at  
24 the time these sale or lease transactions occurred.

25 242. As a result of Ford's breach of the applicable implied warranties,  
26 Tennessee Plaintiff and members of the Tennessee Sub-Class suffered an  
27 ascertainable loss of money, property, and/or value of their Class Vehicles.  
28 Additionally, as a result of the Transmission Defect, Tennessee Plaintiff and

1 members of the Tennessee Sub-Class were harmed and suffered actual damages in  
2 that the Class Vehicles are substantially certain to fail before their expected useful  
3 life has run.

4 243. Ford's actions, as complained of herein, breached the implied warranty  
5 that the Class Vehicles were of merchantable quality and fit for such use in violation  
6 of the Uniform Commercial Code and relevant state law.

7 244. Tennessee Plaintiff and members of the Tennessee Sub-Class have  
8 complied with all obligations under the warranty, or otherwise have been excused  
9 from performance of said obligations as a result of Ford's conduct described herein.

10 245. Privity is not required here because Tennessee Plaintiff and members  
11 of the Tennessee Sub-Class are intended third-party beneficiaries of contracts  
12 between Ford and its distributors and dealers, and specifically, of Ford's express  
13 warranties, including the NVLW, the Powertrain Warranties, and any warranties  
14 provided with certified pre-owned vehicles. The dealers were not intended to be the  
15 ultimate consumers of the Class Vehicles and have rights under the warranty  
16 agreements provided with the Class Vehicles; the warranty agreements were  
17 designed for and intended to benefit the consumer only.

18 246. Tennessee Plaintiff and members of the Tennessee Sub-Class were not  
19 required to notify Ford of the breach because affording Ford a reasonable  
20 opportunity to cure its breach of warranty would have been futile. Ford was also on  
21 notice of the Transmission Defect from the complaints and service requests it  
22 received from Tennessee Plaintiff and the Class Members and through other internal  
23 sources.

24 247. Nonetheless, Tennessee Plaintiff and members of the Tennessee Sub-  
25 Class provided notice to Ford of the breach of express warranties when they took  
26 their vehicles to Ford-authorized provider of warranty repairs. Tennessee Plaintiff  
27 also provided notice to Ford of its breach of express warranty by letter dated April  
28 27, 2022.

1           248. As a direct and proximate cause of Ford's breach, Tennessee Plaintiff  
2 and members of the Tennessee Sub-Class suffered damages and continue to suffer  
3 damages, including economic damages at the point of sale or lease and diminution  
4 of value of their Class Vehicles. Additionally, Tennessee Plaintiff and members of  
5 the Tennessee Sub-Class have incurred or will incur economic damages at the point  
6 of repair in the form of the cost of repair as well as additional losses.

7           249. As a direct and proximate result of Ford's breach of the implied  
8 warranty of merchantability, Tennessee Plaintiff and members of the Tennessee  
9 Sub-Class have been damaged in an amount to be proven at trial.

10                                   **SEVENTH CAUSE OF ACTION**  
11                                   **(Violations of the Tennessee Consumer Protection Act)**  
12                                   **(TENN. CODE ANN. § 47-18-101, *et seq.*)**  
13                                   **(On behalf of the Tennessee Sub-Class)**

14           250. Plaintiffs incorporate by reference the allegations contained in the  
15 preceding paragraphs of this Complaint.

16           251. Tennessee Plaintiff brings this count on behalf of herself and  
17 Tennessee Sub-Class against Defendant.

18           252. Tennessee Plaintiff and members of the Tennessee Sub-Class are  
19 "consumers" as defined by the Tenn. Code Ann. § 47-18-103(2).

20           253. Ford, Tennessee Plaintiff, and the Tennessee Sub-Class Members are  
21 "persons" within the meaning of Tenn. Code Ann. § 47-18-103(9).

22           254. The Class Vehicles are "goods" within the meaning Tenn. Code Ann.  
23 § 47-18-103(5).

24           255. Defendant was and is engaged in "trade," "commerce," and/or  
25 "consumer transaction[s]" within the meaning of Tenn. Code Ann. § 47-18-103(11).

26           256. The Tennessee Consumer Protection Act ("CPA") provides that,  
27 "[u]nfair or deceptive acts or practices affecting the conduct of any trade or  
28 commerce constitute unlawful acts or practices", including but not limited to, "(2)  
causing likelihood of confusion or misunderstanding as to the certification of goods

1 . . . ;” “(5) representing that goods . . . have . . . characteristics . . . uses, benefits . .  
2 . that they do not have;” “(7) representing that goods . . . are of a particular standard,  
3 quality or grade, or that goods are of a particular style or model, if they are of  
4 another;” “(9) advertising goods or services with intent not to sell them as  
5 advertised;” “(22) using any advertisement containing an offer to sell goods . . .  
6 when the offer is not a bona fide effort to sell the advertised goods . . . ;” “(27)  
7 engaging in any other act or practice which is deceptive to the consumer or any  
8 other person...” Tenn. Code Ann. § 47-18-104(a), (b).

9 257. Ford engaged in unlawful trade practices, and unfair or deceptive acts  
10 or practices that violated the Tennessee CPA.

11 258. Ford participated in unfair or deceptive trade practices that violated the  
12 Tennessee CPA. As described below and alleged throughout the Complaint, by  
13 failing to disclose the Transmission Defect, by concealing the Transmission Defect,  
14 by marketing its vehicles as safe, reliable, well-engineered, and of high quality, and  
15 by presenting itself as a reputable manufacturer that valued safety, performance and  
16 reliability, and stood behind its vehicles after they were sold, Ford knowingly and  
17 intentionally misrepresented and omitted material facts in connection with the sale  
18 or lease of the Class Vehicles. Ford systematically misrepresented, concealed,  
19 suppressed, or omitted material facts relating to the Class Vehicles and the  
20 Transmission Defect in the course of its business.

21 259. Ford also engaged in unlawful trade practices by employing deception,  
22 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression,  
23 or omission of any material fact with intent that others rely upon such concealment,  
24 suppression, or omission, in connection with the sale of the Class Vehicles.

25 260. Ford’s unfair and deceptive acts or practices occurred repeatedly in  
26 Ford’s trade or business, were capable of deceiving a substantial portion of the  
27 purchasing public, and imposed a serious safety risk on the public.  
28

1           261. Ford knew that the Class Vehicles suffered from an inherent defect,  
2           were defectively designed and/or manufactured, and were not suitable for their  
3           intended use.

4           262. Ford knew or should have known that its conduct violated the  
5           Tennessee CPA.

6           a. Defendant was under a duty to Tennessee Plaintiff and the Tennessee  
7           Sub-Class Members to disclose the defective nature of the Class  
8           Vehicles because:

9           b. Defendant was in a superior position to know the true state of facts  
10           about the safety defect in the Class Vehicles;

11           c. Defendant made partial disclosures about the quality of the Class  
12           Vehicles without revealing the defective nature of the Class Vehicles;  
13           and

14           263. Defendant actively concealed the defective nature of the Class  
15           Vehicles from Tennessee Plaintiff and the Tennessee Sub-Class Members at the  
16           time of sale and thereafter.

17           264. By failing to disclose the Transmission Defect, Defendant knowingly  
18           and intentionally concealed material facts and breached its duty not to do so.

19           265. The facts concealed or not disclosed by Defendant to Tennessee  
20           Plaintiff and the Tennessee Sub-Class Members are material because a reasonable  
21           person would have considered them to be important in deciding whether or not to  
22           purchase or lease Defendant's Class Vehicles, or to pay less for them. Whether a  
23           vehicle's transmission is defective, which can cause stalling, losing power while  
24           driving, and hesitation, is a material safety concern. Had Tennessee Plaintiff and the  
25           Tennessee Sub-Class Members known that the Class Vehicles suffered from the  
26           Transmission Defect described herein, they would not have purchased or leased the  
27           Class Vehicles or would have paid less for them.  
28

1           266. Tennessee Plaintiff and the Tennessee Sub-Class Members are  
2 reasonable consumers who do not expect that their vehicles will suffer from the  
3 Transmission Defect. That is the reasonable and objective consumer expectation for  
4 vehicles.

5           267. As a result of Defendant's misconduct, Tennessee Plaintiff and the  
6 Tennessee Sub-Class Members have been harmed and have suffered actual damages  
7 in that the Class Vehicles are defective and require repairs or replacement.

8           268. As a direct and proximate result of Defendant's unfair or deceptive acts  
9 or practices, Tennessee Plaintiff and the Tennessee Sub-Class Members have  
10 suffered and will continue to suffer actual damages.

11           269. Ford's violations present a continuing risk to Tennessee Plaintiff and  
12 the Tennessee Sub-Class Members as well as to the general public. Ford's unlawful  
13 acts and practices complained of herein affect the public interest.

14           270. Tennessee Plaintiff provided notice of their claims, by letter dated  
15 April 27, 2022.

16           271. Pursuant to Tenn. Code Ann. § 47-18-109, Tennessee Plaintiff and  
17 members of the Tennessee Sub-Class seek order enjoining Ford's unfair and/or  
18 deceptive acts or practices, damages, treble damages for willful and knowing  
19 violations, pursuant to § 47-18-109(a)(3), punitive damages, attorneys' fees, costs,  
20 and any relief available under the Tennessee CPA that the Court deems just and  
21 proper.

22                                   **EIGHTH CAUSE OF ACTION**  
23                                   **(Breach of Express Warranty)**  
24                                   **(Tex. Bus. & Com. Code §§ 2.313 AND 2A.210)**  
25                                   **(On Behalf of the Texas Sub-Class)**

26           272. Plaintiffs incorporate by reference the allegations contained in the  
preceding paragraphs of this Complaint.

27           273. Plaintiff Eric Senkyrik ("Texas Plaintiff") brings this count on behalf  
28 of himself and the Texas Sub-Class against Defendant.



1           274. Ford is and was at all relevant times a “merchant” with respect to motor  
2 vehicles under Texas Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and a  
3 “seller” of motor vehicles under § 2.103(a)(4).

4           275. With respect to leases, Ford is and was at all relevant times a “lessor”  
5 of motor vehicles under Texas Bus. & Com. Code § 2A.103(a)(16).

6           276. The Class Vehicles are and were at all relevant times “goods” within  
7 the meaning of Texas Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

8           277. The transmissions were manufactured and/or installed in the Class  
9 Vehicles by Defendant and are covered by the express warranty.

10           278. Defendant provided all purchasers and lessees of the Class Vehicles  
11 with an express warranty described herein, which became a material part of the  
12 bargain. Accordingly, Ford’s express warranty is an express warranty under Texas  
13 state law.

14           279. In a section entitled “What is Covered,” Defendant’s express warranty  
15 provides, in relevant part, that “authorized Ford Motor Company dealers will,  
16 without charge, repair, replace, or adjust all parts on your vehicle that malfunction  
17 or fail during normal use during the applicable coverage period due to a  
18 manufacturing defect in factory-supplied materials or factory workmanship.”

19           280. According to Ford, the “bumper to bumper” NVLW “lasts for three  
20 years - unless you drive more than 36,000 miles before three years elapse. In that  
21 case, your coverage ends at 36,000 miles,” if not longer.

22           281. Defendant’s NVLW and other warranties regarding the Class Vehicles  
23 formed a basis of the bargain that was breached when Texas Plaintiff and members  
24 of the Texas Sub-Class purchased or leased the Class Vehicles with the defective  
25 transmission and/or related components.

26           282. The Texas Plaintiff and members of the Texas Sub-Class experienced  
27 defects within the warranty period. Despite the existence of the NVLW, Defendant  
28 failed to inform Texas Plaintiff and members of the Texas Sub-Class that the Class

1 Vehicles were equipped with defective transmissions and related components.  
2 When providing repairs under the express warranty, these repairs were ineffective  
3 and incomplete and did not provide a permanent repair for the Transmission Defect.

4 283. Ford breached the express warranty through the acts and omissions  
5 described above, including by promising to repair or adjust defects in materials or  
6 workmanship of any part supplied by Defendant and then failing to do so. Defendant  
7 has not repaired or adjusted, and has been unable to repair or adjust, the Class  
8 Vehicles materials and workmanship defects.

9 284. Privity is not required here because Texas Plaintiff and members of the  
10 Texas Sub-Class are intended third-party beneficiaries of contracts between Ford  
11 and its distributors and dealers, and specifically, of Ford's express warranties,  
12 including the NVLW, the Powertrain Warranties, and any warranties provided with  
13 certified pre-owned vehicles. The dealers were not intended to be the ultimate  
14 consumers of the Class Vehicles and have rights under the warranty agreements  
15 provided with the Class Vehicles; the warranty agreements were designed for and  
16 intended to benefit the consumer only.

17 285. Any attempt by Ford to disclaim or limit recovery to the terms of the  
18 express warranty is unconscionable and unenforceable here. Specifically, the  
19 warranty limitation is unenforceable because Ford knowingly sold or leased  
20 defective products without informing consumers about the Transmission Defect.  
21 The time limits are unconscionable and inadequate to protect Texas Plaintiff and  
22 the members of the Texas Sub-Class. Among other things, Texas Plaintiff and  
23 members of the Texas Sub-Class did not determine these time limitations and/or did  
24 not know of other limitations not appearing in the text of the warranties, the terms  
25 of which were drafted by Ford and unreasonable favored Ford. A gross disparity in  
26 bargaining power and knowledge of the extent, severity, and safety risk of the  
27 Transmission Defect existed between Ford and members of the Texas Sub-Class.

28 286. Further, the limited warranty promising to repair and/or correct a

1 manufacturing or workmanship defect fails of its essential purpose because the  
2 contractual remedy is insufficient to make Texas Plaintiff and the members of the  
3 Texas Sub-Class whole, because Ford has failed and/or has refused to adequately  
4 provide the promised remedies, *i.e.* a permanent repair, within a reasonable time.

5 287. Texas Plaintiff was not required to notify Ford of the breach because  
6 affording Ford a reasonable opportunity to cure its breach of written warranty would  
7 have been futile. Ford was also on notice of the Transmission Defect from the  
8 complaints and service requests it received from Class Members, including those  
9 formal complaints submitted to NHTSA, and through other internal sources.

10 288. Nonetheless, Texas Plaintiff and members of the Texas Sub-Class  
11 provided notice to Ford of the breach of express warranties when they took their  
12 vehicles to Ford-authorized providers of warranty repairs. Texas Plaintiff also  
13 provided notice to Ford of its breach of express warranty by letter dated April 27,  
14 2022.

15 289. As a result of Ford's breach of the applicable express warranties,  
16 owners and/or lessees of the Class Vehicles suffered, and continue to suffer, an  
17 ascertainable loss of money, property, and/or value of their Class Vehicles.

18 290. As a direct and proximate result of Defendant's breach of express  
19 warranties, Texas Plaintiff and members of the Texas Sub-Class have been damaged  
20 in an amount to be determined at trial.

21 291. As a result of Ford's breach of the express warranty, Texas Plaintiff  
22 and Texas Sub-Class Members are entitled to legal and equitable relief against Ford,  
23 including actual damages, specific performance, attorney's fees, costs of suit, and  
24 other relief as appropriate.

**NINTH CAUSE OF ACTION**

**(Breach of the Implied Warranty of Merchantability)**

**(TEX. BUS. & COM. CODE §§ 2.314 AND 2A.212)**

**(On behalf of the Texas Sub-Class)**

292. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

293. Texas Plaintiff brings this count on behalf of himself and the Texas Sub-Class against Defendant.

294. Ford is and was at all relevant times a “merchant” with respect to motor vehicles under Texas Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and a “seller” of motor vehicles under § 2.103(a)(4).

295. With respect to leases, Ford is and was at all relevant times a “lessor” of motor vehicles under Texas Bus. & Com. Code § 2A.103(a)(16).

296. The Class Vehicles are and were at all relevant times “goods” within the meaning of Texas Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

297. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under Texas Bus. & Com. Code §§ 2.314 and 2A.212.

298. Ford knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased. Ford directly sold and marketed Class Vehicles to customers through authorized dealers, like those from whom Texas Plaintiff and members of the Texas Sub-Class bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. Ford knew that the Class Vehicles would and did pass unchanged from the authorized dealers to Texas Plaintiff and members of the Texas Sub-Class, with no modification to the defective Class Vehicles.

299. Ford provided Texas Plaintiff and members of the Texas Sub-Class with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However,

1 the Class Vehicles are not fit for their ordinary purpose of providing reasonably  
2 reliable and safe transportation because, *inter alia*, the Class Vehicles and their  
3 transmissions suffered from an inherent defect at the time of sale and thereafter and  
4 are not fit for their particular purpose of providing safe and reliable transportation.

5 300. This implied warranty included, among other things: (i) a warranty that  
6 the Class Vehicles that were manufactured, supplied, distributed, and/or sold by  
7 Ford were safe and reliable for providing transportation; and (ii) a warranty that the  
8 Class Vehicles would be fit for their intended use while the Class Vehicles were  
9 being operated.

10 301. Contrary to the applicable implied warranties, the Class Vehicles at the  
11 time of sale and thereafter were not fit for their ordinary and intended purpose of  
12 providing Plaintiffs and Class Members with reliable, durable, and safe  
13 transportation. Instead, the Class Vehicles were and are defective at the time of sale  
14 or lease and thereafter as more fully described above. Ford knew of this defect at  
15 the time these sale or lease transactions occurred.

16 302. As a result of Ford's breach of the applicable implied warranties, Texas  
17 Plaintiff and members of the Texas Sub-Class suffered an ascertainable loss of  
18 money, property, and/or value of their Class Vehicles. Additionally, as a result of  
19 the Transmission Defect, Texas Plaintiff and members of the Texas Sub-Class were  
20 harmed and suffered actual damages in that the Class Vehicles are substantially  
21 certain to fail before their expected useful life has run.

22 303. Ford's actions, as complained of herein, breached the implied warranty  
23 that the Class Vehicles were of merchantable quality and fit for such use in violation  
24 of the Uniform Commercial Code and relevant state law.

25 304. Texas Plaintiff and members of the Texas Sub-Class have complied  
26 with all obligations under the warranty, or otherwise have been excused from  
27 performance of said obligations as a result of Ford's conduct described herein.  
28

1           305. Privity is not required here because Texas Plaintiff and members of the  
2 Texas Sub-Class are intended third-party beneficiaries of contracts between Ford  
3 and its distributors and dealers, and specifically, of Ford's express warranties,  
4 including the NVLW, the Powertrain Warranties, and any warranties provided with  
5 certified pre-owned vehicles. The dealers were not intended to be the ultimate  
6 consumers of the Class Vehicles and have rights under the warranty agreements  
7 provided with the Class Vehicles; the warranty agreements were designed for and  
8 intended to benefit the consumer only.

9           306. Texas Plaintiff and members of the Texas Sub-Class were not required  
10 to notify Ford of the breach because affording Ford a reasonable opportunity to cure  
11 its breach of warranty would have been futile. Ford was also on notice of the  
12 Transmission Defect from the complaints and service requests it received from  
13 Texas Plaintiff and the Class Members and through other internal sources.

14           307. Nonetheless, Texas Plaintiff and members of the Texas Sub-Class  
15 provided notice to Ford of the breach of express warranties when they took their  
16 vehicles to Ford-authorized providers of warranty repairs. Texas Plaintiff also  
17 provided notice to Ford of its breach of express warranty by letter dated April 27,  
18 2022.

19           308. As a direct and proximate cause of Ford's breach, Texas Plaintiff and  
20 members of the Texas Sub-Class suffered damages and continue to suffer damages,  
21 including economic damages at the point of sale or lease and diminution of value of  
22 their Class Vehicles. Additionally, Texas Plaintiff and members of the Texas Sub-  
23 Class have incurred or will incur economic damages at the point of repair in the  
24 form of the cost of repair as well as additional losses.

25           309. As a direct and proximate result of Ford's breach of the implied  
26 warranty of merchantability, Texas Plaintiff and members of the Texas Sub-Class  
27 have been damaged in an amount to be proven at trial.  
28

**TENTH CAUSE OF ACTION**  
**(Violations of the Texas Deceptive Trade Practices Act –**  
**Consumer Protection Act)**  
**(Texas Bus. & Com. Code § 17.41, *et seq.*)**  
**(On behalf of the Texas Sub-Class)**

310. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

311. Texas Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Texas Sub-Class.

312. Ford is a “person” as that term is defined in Tex. Bus. & Com. Code § 17.45(3).

313. Texas Plaintiff and the members of the Texas Sub-Class are individuals, partnerships, or corporations with assets of less than \$25 million (or are controlled by corporations or entities with less than \$25 million in assets), *see* Tex. Bus. & Com. Code § 17.41, and are therefore “consumers” pursuant to Tex. Bus. & Com. Code § 17.45(4).

314. Ford is engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tex. Bus. & Com. Code § 17.46(a).

315. The Texas Deceptive Trade Practices – Consumer Protection Act (“Texas DTPA”) prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of action,” which means “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3). Ford engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated the Texas DTPA.

316. Ford participated in unfair or deceptive trade practices that violated the Texas DTPA. As described below and alleged throughout the Complaint, by failing to disclose the Transmission Defect, by concealing the Transmission Defect, by



1 marketing its vehicles as safe, reliable, well-engineered, and of high quality, and by  
2 presenting itself as a reputable manufacturer that valued safety, performance and  
3 reliability, and stood behind its vehicles after they were sold, Ford knowingly and  
4 intentionally misrepresented and omitted material facts in connection with the sale  
5 or lease of the Class Vehicles. Ford systematically misrepresented, concealed,  
6 suppressed, or omitted material facts relating to the Class Vehicles and the  
7 Transmission Defect in the course of its business.

8 317. Ford also engaged in unlawful trade practices by employing deception,  
9 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression,  
10 or omission of any material fact with intent that others rely upon such concealment,  
11 suppression, or omission, in connection with the sale of the Class Vehicles.

12 318. Ford's unfair and deceptive acts or practices occurred repeatedly in  
13 Ford's trade or business, were capable of deceiving a substantial portion of the  
14 purchasing public and imposed a serious safety risk on the public.

15 319. Ford knew that the Class Vehicles suffered from an inherent defect,  
16 were defectively designed and/or manufactured, and were not suitable for their  
17 intended use.

18 a. Ford knew or should have known that its conduct violated the Texas  
19 DTPA.

20 b. Defendant was under a duty to Texas Plaintiff and the Texas Sub-Class  
21 Members to disclose the defective nature of the Class Vehicles  
22 because:

23 c. Defendant was in a superior position to know the true state of facts  
24 about the safety defect in the Class Vehicles;

25 320. Defendant made partial disclosures about the quality of the Class  
26 Vehicles without revealing the defective nature of the Class Vehicles; and  
27  
28

1           321. Defendant actively concealed the defective nature of the Class  
2 Vehicles from Texas Plaintiff and the Texas Sub-Class Members at the time of sale  
3 and thereafter.

4           322. By failing to disclose the Transmission Defect, Defendant knowingly  
5 and intentionally concealed material facts and breached its duty not to do so.

6           323. The facts concealed or not disclosed by Defendant to Texas Plaintiff  
7 and the Texas Sub-Class Members are material because a reasonable person would  
8 have considered them to be important in deciding whether or not to purchase or  
9 lease Defendant's Class Vehicles, or to pay less for them. Whether a vehicle's  
10 transmission is defective, which can cause stalling, losing power while driving, and  
11 hesitation, is a material safety concern. Had Texas Plaintiff and the Texas Sub-Class  
12 Members known that the Class Vehicles suffered from the Transmission Defect  
13 described herein, they would not have purchased or leased the Class Vehicles or  
14 would have paid less for them.

15           324. Texas Plaintiff and the Texas Sub-Class Members are reasonable  
16 consumers who do not expect that their vehicles will suffer from the Transmission  
17 Defect. That is the reasonable and objective consumer expectation for vehicles.

18           325. As a result of Defendant's misconduct, Texas Plaintiff and the Texas  
19 Sub-Class Members have been harmed and have suffered actual damages in that the  
20 Class Vehicles are defective and require repairs or replacement.

21           326. As a direct and proximate result of Defendant's unfair or deceptive acts  
22 or practices, Texas Plaintiff and the Texas Sub-Class Members have suffered and  
23 will continue to suffer actual damages.

24           327. Ford's violations present a continuing risk to Texas Plaintiff and the  
25 Texas Sub-Class Members as well as to the general public. Ford's unlawful acts and  
26 practices complained of herein affect the public interest.

27           328. Texas Plaintiff provided notice of their claims by letter dated April 27,  
28 2022.

1           329. Pursuant to Tex. Bus. & Com. Code § 17.50, Texas Plaintiff and  
 2 members of the Texas Sub-Class seek an order enjoining Ford from engaging in  
 3 unfair and/or deceptive acts or practices, damages, multiple damages for knowing  
 4 and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and  
 5 attorneys' fees, costs, and any other just and proper relief available under the Texas  
 6 DTPA.

7                                   **ELEVENTH CAUSE OF ACTION**  
 8                                   **(Breach of Express Warranty)**  
 9                                   **(FLA. STAT. § 672.313)**  
 10                                  **(On behalf of the Florida Sub-Class)**

11           330. Plaintiffs incorporate by reference the allegations contained in the  
 12 preceding paragraphs of this Complaint.

13           331. Plaintiff Michael Hogan ("Florida Plaintiff") brings this claim on  
 14 behalf of himself and the Florida Sub-Class.

15           332. Ford is and was at all relevant times a "merchant" with respect to motor  
 16 vehicles.

17           333. Ford provided a New Vehicle Limited Warranty that expressly  
 18 warranted Ford would repair any defects in materials or workmanship free of charge  
 19 during the applicable warranty periods.

20           334. The Florida Plaintiff and Florida Sub-Class Members experienced the  
 21 Transmission Defect within the warranty period.

22           335. Ford breached its warranty by failing to provide an adequate repair  
 23 when Plaintiffs and Florida Sub-Class Members presented their Class Vehicles to  
 24 authorized Ford dealers for repair of the Transmission Defect.

25           336. The warranty formed the basis of the bargain that was reached when  
 26 Florida Plaintiff and the Florida Sub-Class Members purchased or leased their Class  
 27 Vehicles.

28           337. As a result of Ford's breach of its express warranty, Florida Plaintiff  
 and the Florida Sub-Class Members have suffered economic damages including,

1 but not limited to, the loss of the benefit of their bargain, loss of vehicle use,  
2 diminished value, substantial loss in value and resale value, out-of-pocket expenses  
3 for maintenance and service that they otherwise would not have incurred but for the  
4 Transmission Defect.

5 338. The Florida Plaintiff and Florida Sub-Class Members were not  
6 required to notify Ford of the breach or were excused from doing so because  
7 affording Ford a reasonable opportunity to cure its breach would have been futile.

8 339. The Florida Plaintiff and Florida Sub-Class Members provided Ford  
9 with notice of the issues complained of herein within a reasonable time by  
10 presenting their Class Vehicles to authorized Ford dealers for repair of the  
11 Transmission Defect. Ford also received notice of the issues complained of herein  
12 by numerous complaints made directly to Ford and online, and from internal  
13 sources. The Florida Plaintiff also gave Ford notice of its breaches of warranty by  
14 letter dated June 13, 2022.

15 340. Defendant has been afforded a reasonable opportunity to cure its  
16 breach, including when the Florida Plaintiff and Florida Sub-Class Members  
17 brought their vehicles in for diagnoses and repair of the Transmission system.

18 341. The Florida Plaintiff and Florida Sub-Class Members have complied  
19 with all obligations under the warranty or otherwise have been excused from  
20 performance of such obligations as a result of Ford's conduct described herein.

21 342. In its capacity as a supplier and/or warrantor, and by the conduct  
22 described herein, any attempt by Ford to limit its express warranty in a manner that  
23 would exclude or limit coverage for the Transmission Defect, including benefit-of-  
24 the-bargain, incidental, or consequential damages, would cause the warranty to fail  
25 of its essential purpose. The Florida Plaintiff and Florida Sub-Class Members have  
26 presented their Class Vehicles to Ford's authorized dealers on numerous occasions  
27 and Ford has failed to remedy the Transmission Defect. As a result, the Florida  
28 Plaintiff and Florida Sub-Class Members are left with defective vehicles that pose

1 a safety hazard and do not function as intended and, therefore, have been deprived  
2 of the benefit of their bargains.

3 343. In its capacity as a supplier and/or warrantor, and by the conduct  
4 described herein, any attempt by Ford to limit its express warranty in a manner that  
5 would exclude or limit coverage for the Transmission Defect would be  
6 unconscionable. Ford's warranties were adhesive and did not permit negotiations.  
7 Ford possessed superior knowledge of the Transmission Defect, which is a latent  
8 defect, prior to offering Class Vehicles for sale. Ford concealed and did not disclose  
9 the Transmission Defect, and Ford did not remedy the Transmission Defect prior to  
10 sale or lease (or afterward).

11 344. As a direct and proximate result of Ford's breach of express warranties,  
12 the Florida Plaintiff and Florida Sub-Class Members have been damaged in an  
13 amount to be determined at trial.

14 **TWELFTH CAUSE OF ACTION**  
15 **(Breach of Implied Warranty of Merchantability)**  
16 **(FLA. STAT. § 672.314.)**  
17 **(On behalf of the Florida Sub-Class)**

18 345. Plaintiffs incorporate by reference the allegations contained in the  
19 preceding paragraphs of this Complaint.

20 346. The Florida Plaintiff brings this claim on behalf of himself and the  
21 Florida Sub-Class.

22 347. Ford is and was at all relevant times a "merchant" with respect to motor  
23 vehicles pursuant to Fla. Stat. § 672.104.

24 348. The Class Vehicles are "goods" pursuant to Fla. Stat. § 672.105.

25 349. A warranty that the Class Vehicles were in merchantable quality and  
26 condition arises by operation of law with respect to transactions for the purchase  
27 and lease of Class Vehicles. Defendant provided the Florida Plaintiff and Florida  
28 Sub-Class Members with an implied warranty that the Class Vehicles and their

1 components and parts are merchantable and fit for the ordinary purposes for which  
2 they were sold.

3 350. However, the Class Vehicles are not fit for their ordinary purpose of  
4 providing reasonably reliable and safe transportation because, inter alia, the Class  
5 Vehicles suffered from the inherent Transmission Defect at the time of sale and  
6 thereafter.

7 351. Privity is not required here because Florida Plaintiffs and members of  
8 the Florida Sub-Class are intended third-party beneficiaries of contracts between  
9 GM and its distributors and dealers, and specifically, of GM's express warranties,  
10 including the NVLW, the Powertrain Warranties, and any warranties provided with  
11 certified pre-owned vehicles. The dealers were not intended to be the ultimate  
12 consumers of the Class Vehicles and have rights under the warranty agreements  
13 provided with the Class Vehicles; the warranty agreements were designed for and  
14 intended to benefit the consumer only.

15 352. Defendant's actions, as complained of herein, breached the implied  
16 warranty that the Class Vehicles were of merchantable quality and fit for such use.

17 353. The Florida Plaintiff and Florida Sub-Class Members were not  
18 required to notify Ford of the breach or were excused from doing so because  
19 affording Ford a reasonable opportunity to cure its breach of implied warranty  
20 would have been futile.

21 354. Ford also had notice of the issues complained of herein by the  
22 presentation of the Florida Plaintiff's and Florida Sub-Class Members' Class  
23 Vehicles to authorized Ford dealers for repair of the Transmission Defect, numerous  
24 complaints made directly to Ford and online, and from internal sources. The Florida  
25 Plaintiff also gave Ford notice of its breaches of warranty by letter dated June 13,  
26 2022.

355. Defendant has been afforded a reasonable opportunity to cure its breach, including when the Florida Plaintiff and Florida Sub-Class Members brought their vehicles in for diagnoses and repair of the Transmission system.

356. Because the Florida Plaintiff and Florida Sub-Class Members purchased their vehicles from authorized Ford dealers, the Florida Plaintiff and Florida Sub-Class Members are in privity with Ford since an agency relationship establishes privity for purposes of the breach of implied warranty claims. In addition, privity is not required because the Florida Plaintiff and Florida class members are intended third-party beneficiaries of Defendant's implied warranties.

357. As a result of Defendant's breach of the applicable implied warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles.

**THIRTEENTH CAUSE OF ACTION**  
**(Violation of Florida Deceptive and Unfair**  
**Trade Practices Act)**  
**(FLA. STAT. § 501.201, *et seq.*)**  
**(On behalf of the Florida Sub-Class)**

358. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

359. The Florida Plaintiff bring this claim on behalf of himself and the Florida Sub-Class.

360. Plaintiffs and the Florida Sub-Class Members are "consumers" within the meaning of Fla. Stat. §501.203 (7).

361. Defendant engages in "trade or commerce" within the meaning of Fla. Stat. §501.203 (8) by offering for sale or lease the Class Vehicles to Plaintiffs and the Florida Sub-Class Members.

362. By failing to disclose and concealing the Transmission Defect from the Florida Plaintiff and Florida Sub-Class Members, Ford violated Fla. Stat. §501.204 (1), by engaging in "[u]nfair methods of competition, unconscionable acts or



1 practices, and unfair or deceptive acts or practices in the conduct of any trade or  
2 commerce.”

3 363. Ford’s unfair and deceptive acts or practices occurred repeatedly in  
4 Ford’s trade or business, were capable of deceiving a substantial portion of the  
5 purchasing public and imposed a serious safety risk on the public.

6 364. Ford knew that the Class Vehicles suffered from an inherent defect,  
7 were defectively manufactured or designed, or contained defective materials, and  
8 were not suitable for their intended use.

9 365. Ford’s acts and practices, described herein, are unfair in violation of  
10 Florida law because it violates Florida public policy and warranty laws requiring a  
11 manufacturer to ensure that goods it places on the market are fit for their ordinary  
12 and intended purposes.

13 366. Ford acted in an unethical, unscrupulous, outrageous, oppressive, and  
14 substantially injurious manner, in at least the following respects: promoted and sold  
15 or leased Class Vehicles it knew were defective; failed to disclose the Transmission  
16 Defect; failed to make repairs or made repairs and provided replacements that  
17 caused the Florida Plaintiff and the Florida Sub-Class members to experience  
18 repeated instances of failure, rendering the New Vehicle Limited Warranty useless;  
19 and minimized the scope and severity of the problems with the Class Vehicles,  
20 refusing to acknowledge that they are defective, and failing to provide adequate  
21 relief to consumers.

22 367. As a result of the Transmission defect, the Florida Plaintiff and Florida  
23 Sub-Class Members were harmed and suffered actual damages in that the Class  
24 Vehicles’ Transmissions are substantially certain to fail or have failed before their  
25 expected useful life has run.

26 368. Ford had a duty to the Florida Plaintiff and Florida Sub-Class Members  
27 to disclose the Transmission Defect because: Ford was in a superior position to  
28 know the true state of facts about the safety defect in the Class Vehicles’

1 Transmission systems; and the Florida Plaintiff and Florida Sub-Class Members  
2 could not reasonably have been expected to learn or discover that their  
3 Transmissions had a dangerous safety defect until it manifested.

4 369. In failing to disclose the Transmission Defect, Ford knowingly and  
5 intentionally concealed material facts and breached its duty not to do so. Had the  
6 Florida Plaintiff and Florida Sub-Class Members known that the Class Vehicles'  
7 Transmission systems were defective, they would not have purchased or leased the  
8 Class Vehicles or would have paid less for them.

9 370. The Florida Plaintiff and Florida Sub-Class Members are reasonable  
10 consumers who do not expect the Transmissions installed in their vehicles to exhibit  
11 the Transmission Defect.

12 371. As a result of Ford's conduct, Plaintiffs and Florida Sub-class  
13 Members were harmed and suffered actual damages in that the Class Vehicles  
14 experienced and may continue to experience the Transmission Defect.

15 372. As a direct and proximate result of Ford's unfair or deceptive acts or  
16 practices, the Florida Plaintiff and Florida Sub-Class Members suffered and will  
17 continue to suffer actual damages.

18 373. The Florida Plaintiff and Florida Sub-Class Members are entitled to  
19 equitable relief, actual damages, including the diminished value of their Class  
20 Vehicles, attorneys' fees and costs, and any other relief provided by law.

21 **FOURTEENTH CAUSE OF ACTION**  
22 **(Breach of Express Warranty)**  
23 **(NEB. REV. STAT. U.C.C. § 2-313 and 2A-210)**  
24 **(On behalf of the Nebraska Sub-Class)**

25 374. Plaintiffs incorporate by reference the allegations contained in the  
26 preceding paragraphs of this Complaint.

27 375. Sharon Jackson ("Nebraska Plaintiff") brings this claim individually  
28 and on behalf of the Nebraska Class against Ford.

376. Ford is and was at all relevant times a "merchant" with respect to motor

1 vehicles under Neb. Rev. St. U.C.C. § 2-104(1) and a “seller” of motor vehicles  
2 under § 2-103(1)(d).

3 377. With respect to leases, Ford is and was at all relevant times a “lessor”  
4 of motor vehicles under Neb. Rev. St. U.C.C. § 2A-103(1)(p).

5 378. The Class Vehicles are and were at all relevant times “goods” within  
6 the meaning of Neb. Rev. St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

7 379. In connection with the purchase or lease of one of its new Class  
8 Vehicles, Ford provides an express “New Vehicle Limited Warranty” (“NVLW”)  
9 for a period of 36 months or 36,000 miles, whichever occurs first. This NVLW  
10 exists to cover repairs and adjustments needed to correct defects in materials or  
11 workmanship of any part supplied by Ford.

12 380. Ford’s NVLW formed a basis of the bargain that was breached when  
13 Plaintiff and the Nebraska Class members purchased or leased the Class Vehicles  
14 with Transmission Defects.

15 381. Plaintiff and the Nebraska Class members experienced defects within  
16 the warranty period. Despite the existence of the NVLW, Ford failed to inform  
17 Plaintiff and the Nebraska Class members that the Class Vehicles contain defective  
18 transmissions.

19 382. Privity is not required here because Nebraska Plaintiff and members of  
20 the Nebraska Sub-Class are intended third-party beneficiaries of contracts between  
21 Ford and its distributors and dealers, and specifically, of Ford’s express warranties,  
22 including the NVLW, the Powertrain Warranties, and any warranties provided with  
23 certified pre-owned vehicles. The dealers were not intended to be the ultimate  
24 consumers of the Class Vehicles and have rights under the warranty agreements  
25 provided with the Class Vehicles; the warranty agreements were designed for and  
26 intended to benefit the consumer only.

27 383. Ford breached the express warranty promising to repair or adjust  
28 defects in materials or workmanship of any part supplied by Ford. Ford has not

1 repaired or adjusted, and has been unable to repair or adjust, the Class Vehicles  
2 materials and workmanship defects.

3 384. Ford was provided notice of these issues within a reasonable time of  
4 Plaintiffs' knowledge of the non-conforming or defective nature of the Class  
5 Vehicles, by letter dated June 13, 2022, complaints by Plaintiffs or Class Members  
6 to Ford either orally or in writing, complaints to Ford dealerships, intermediate  
7 sellers, or repair facilities either orally or in writing, presentation of the vehicles for  
8 repair to dealerships or to intermediate sellers or repair facilities, countless  
9 consumer complaints to NHTSA regarding the Defect that is the subject of this  
10 Complaint, and/or by the allegations contained in this Complaint.

11 385. As a direct and proximate result of Ford's breach of express warranties,  
12 Plaintiff and the Nebraska Class members have been damaged in an amount to be  
13 determined at trial.

14 **FIFTEENTH CAUSE OF ACTION**  
15 **(Breach of Implied Warranty of Merchantability)**  
16 **(NEB. REV. STAT. U.C.C. § 2-314 and 2A-212)**  
17 **(On behalf of the Nebraska Sub-Class)**

18 386. Plaintiffs incorporate by reference the allegations contained in the  
19 preceding paragraphs of this Complaint.

20 387. Nebraska Plaintiff bring this Count on behalf of themselves and the  
21 Nebraska Class Members.

22 388. Ford is and was at all relevant times a "merchant" with respect to  
23 motor vehicles under Neb. Rev. St. U.C.C. § 2-104(1) and a "seller" of motor  
24 vehicles under § 2-103(1)(d).

25 389. With respect to leases, Ford is and was at all relevant times a "lessor"  
26 of motor vehicles under Neb. Rev. St. U.C.C. § 2A-103(1)(p).

27 390. The Class Vehicles are and were at all relevant times "goods" within  
28 the meaning of Neb. Rev. St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

1           391. A warranty that the Class Vehicles were in merchantable condition and  
2 fit for the ordinary purpose for which vehicles are used is implied by law pursuant  
3 to Neb. Rev. St. U.C.C. §§ 2-314 and 2A-212.

4           392. The Class Vehicles, when sold or leased and at all times thereafter,  
5 were not in merchantable condition and are not fit for the ordinary purpose for which  
6 vehicles are used.

7           393. It was reasonable to expect that Plaintiffs and other Class Members  
8 may use, consume, or be affected by the defective vehicles.

9           394. The transmissions in the Class Vehicles are inherently defective in that  
10 they stall, shudder, fail to accelerate and slip, thereby increasing the risk of serious  
11 injury or death.

12           395. Plaintiffs and other Class Members were and are third-party  
13 beneficiaries to the Ford manufacturer's contracts with Ford-certified/authorized  
14 retailers who sold and leased the Class Vehicles to Plaintiffs and other Class  
15 Members

16           396. Privity is not required here because Nebraska Plaintiff and members  
17 of the Nebraska Sub-Class are intended third-party beneficiaries of contracts  
18 between Ford and its distributors and dealers, and specifically, of Ford's express  
19 warranties, including the NVLW, the Powertrain Warranties, and any warranties  
20 provided with certified pre-owned vehicles. The dealers were not intended to be the  
21 ultimate consumers of the Class Vehicles and have rights under the warranty  
22 agreements provided with the Class Vehicles; the warranty agreements were  
23 designed for and intended to benefit the consumer only.

24           397. Ford was provided notice of these issues within a reasonable time of  
25 Plaintiffs' knowledge of the non-conforming or defective nature of the Class  
26 Vehicles, by letter dated June 13, 2022, complaints by Plaintiffs or Class Members  
27 to Ford either orally or in writing, complaints to Ford dealerships, intermediate  
28 sellers, or repair facilities either orally or in writing, presentation of the vehicles for

1 repair to dealerships or to intermediate sellers or repair facilities, countless  
 2 consumer complaints to NHTSA regarding the Defect that is the subject of this  
 3 Complaint, and/or by the allegations contained in this Complaint.

4 398. As a direct and proximate result of Ford's breach of the implied  
 5 warranty of merchantability, Plaintiffs and the Class have been damaged in an  
 6 amount to be proven at trial.

7 **SIXTEENTH CAUSE OF ACTION**  
 8 **(Violation Of Nebraska Consumer Protection Act)**  
 9 **(NEB. REV. STAT. § 59-1601, *et seq.*)**  
 10 **(On behalf of the Nebraska Sub-Class)**

11 399. Plaintiffs incorporate by reference the allegations contained in the  
 12 preceding paragraphs of this Complaint.

13 400. Plaintiff Sharon Jackson ("Nebraska Plaintiff") brings this claim  
 14 against Ford on behalf of herself and the Nebraska Subclass.

15 401. Defendant, the Nebraska Plaintiff, and the Nebraska Subclass  
 16 members are "person[s]" under the Nebraska Consumer Protection Act ("Nebraska  
 17 CPA"), Neb. Rev. Stat. § 59-1601(1).

18 402. Defendant's actions as set forth herein occurred in the conduct of trade  
 19 or commerce as defined under Neb. Rev. Stat. § 59-1601(2).

20 403. The Nebraska CPA prohibits "unfair or deceptive acts or practices in  
 21 the conduct of any trade or commerce." Neb. Rev. Stat. § 59-1602. Defendant's  
 22 conduct as set forth herein constitutes unfair or deceptive acts or practices.

23 404. In the course of Defendant's business, Defendant willfully failed to  
 24 disclose and actively concealed that the Transmissions and related components in  
 25 the Class Vehicles are defective, as described above. Accordingly, Defendant  
 26 engaged in unfair methods of competition, unconscionable acts or practices, and  
 27 unfair or deceptive acts or practices, including representing that the Class Vehicles  
 28 have characteristics, uses, benefits, and qualities which they do not have;  
 representing that the Class Vehicles are of a particular standard and quality when

1 they are not; failing to reveal a material fact, the omission of which tends to mislead  
2 or deceive the consumer, and which fact could not reasonably be known by the  
3 consumer; making a representation of fact or statement of fact material to the  
4 transaction such that a person reasonably believes the represented or suggested state  
5 of affairs to be other than it actually is; and failing to reveal facts that are material  
6 to the transaction in light of representations of fact made in a positive manner.

7 405. In purchasing or leasing the Class Vehicles, Plaintiff and the other  
8 Subclass members were deceived by Defendant's failure to disclose that the Class  
9 Vehicles' transmissions were defective, as described above.

10 406. Nebraska Plaintiff and the Nebraska Sub-Class Members reasonably  
11 relied upon Defendant's false misrepresentations. They had no way of knowing that  
12 Defendant's representations were false and gravely misleading. As alleged herein,  
13 Defendant engaged in multiple methods of deception. The Nebraska Plaintiff and  
14 Subclass members did not, and could not, unravel Defendant's deception on their  
15 own.

16 407. Defendant's actions as set forth above occurred in the conduct of trade  
17 or commerce.

18 408. Defendant's unfair or deceptive acts or practices were likely to and did  
19 in fact deceive reasonable consumers.

20 409. Defendant intentionally and knowingly misrepresented material facts  
21 regarding the Class Vehicles with intent to mislead the Nebraska Plaintiff and the  
22 Subclass.

23 410. Defendant knew or should have known that its conduct violated the  
24 Nebraska CPA.

25 411. Defendant owed the Nebraska Plaintiff and the Subclass a duty to  
26 disclose the truth about the Transmission Defect because Defendant:

27 a. Possessed exclusive knowledge of the Defect;



b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or

c. Made incomplete representations that the Class Vehicles are defective, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

412. Defendant had a duty to disclose that the Class Vehicles' transmissions were defective because the Nebraska Plaintiff and the other Subclass members relied on Defendant's material representations that the Class Vehicles they were purchasing were safe and free from defects.

413. Defendant's conduct proximately caused injuries to Nebraska Plaintiff and the Sub-Class.

414. The Nebraska Plaintiff provided notice to Ford of its violation of the Nebraska CPA on June 13, 2022.

415. Because Defendant's conduct caused injury to Nebraska Subclass members' property through violations of the Nebraska CPA, the Nebraska Plaintiff and the Nebraska Subclass seek recovery of actual damages, as well as enhanced damages up to \$1,000, an order enjoining Defendant's unfair or deceptive acts and practices, court costs, reasonable attorneys' fees, and any other just and proper relief available under Neb. Rev. Stat. § 59-1609.

## **SEVENTEENTH CAUSE OF ACTION**

### **(Unjust Enrichment)**

### **(On Behalf of the Nationwide Class)**

416. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

417. Plaintiffs bring this cause of action on behalf of themselves and the Class, or alternatively on behalf of the Sub-Classes.

418. As a direct and proximate result of Defendant's failure to disclose known defects, Defendant has profited through the sale and lease of the Class

1 Vehicles. Although these vehicles are purchased through Defendant's agents, the  
2 money from the vehicle sales flows directly back to Defendant.

3 419. As a result of its wrongful acts, concealments, and omissions of the  
4 defect in its Class Vehicles, as set forth above, Defendant charged a higher price for  
5 their vehicles than the vehicles' true value. Plaintiffs and members of the Class paid  
6 that higher price for their vehicles to Defendant's authorized dealers, which are in  
7 Defendant's control. Defendant also reaps huge profits from the sales of its vehicles  
8 through its authorized dealers.

9 420. Additionally, as a direct and proximate result of Defendant's failure to  
10 disclose known defects in the Class Vehicles, Plaintiffs and Class Members have  
11 vehicles that require repeated, high-cost repairs that can and therefore have  
12 conferred an unjust substantial benefit upon Defendant.

13 421. Defendant has been unjustly enriched due to the known defects in the  
14 Class Vehicles through the use money paid that earned interest or otherwise added  
15 to Defendant's profits when said money should have remained with Plaintiff and  
16 Class Members.

17 422. As a result of the Defendant's unjust enrichment, Plaintiffs and Class  
18 Members have suffered damages.

19 **PRAYER FOR RELIEF**

20 423. Plaintiffs, individually and on behalf of all others similarly situated,  
21 request the Court to enter judgment against Defendant, as follows:

- 22 (a) An order certifying the proposed Class, designating Plaintiffs as  
23 named representatives of the Classes, and designating the  
24 undersigned as Class Counsel;
- 25 (b) A declaration that Defendant is financially responsible for notifying  
26 all Class Members about the defective nature of the Transmission,  
27 including the need for periodic maintenance;
- 28 (c) An order enjoining Defendant from further deceptive distribution,

1 sales, and lease practices with respect to Class Vehicles; compelling  
2 Defendant to issue a voluntary recall for the Class Vehicles pursuant  
3 to 49 U.S.C. § 30118(a); compelling Defendant to remove, repair,  
4 and/or replace the Class Vehicles' defective Transmission with  
5 suitable alternative product(s) that do not contain the defects alleged  
6 herein; enjoining Defendant from selling the Class Vehicles with the  
7 misleading information; and/or compelling Defendant to reform its  
8 warranty, in a manner deemed to be appropriate by the Court, to cover  
9 the injury alleged and to notify all Class Members that such warranty  
10 has been reformed;

11 (d) An award to Plaintiffs and the Class for compensatory, exemplary,  
12 and statutory damages, including interest, in an amount to be proven  
13 at trial;

14 (e) Any and all remedies provided pursuant to the Magnuson-Moss  
15 Warranty Act;

16 (f) Any and all remedies provided pursuant to the causes of action and  
17 statutes alleged herein;

18 (g) A declaration that Defendant must disgorge, for the benefit of the  
19 Class, all or part of the ill-gotten profits it received from the sale or  
20 lease of its Class Vehicles or make full restitution to Plaintiffs and  
21 Class Members;

22 (h) An award of attorneys' fees and costs, as allowed by law;

23 (i) An award of pre-judgment and post-judgment interest, as provided by  
24 law;

25 (j) Leave to amend the Complaint to conform to the evidence produced  
26 at trial; and

27 (k) Such other relief as may be appropriate under the circumstances.  
28

**DEMAND FOR JURY TRIAL**

424. Pursuant to Federal Rule of Civil Procedure 38(b) and Central District of California Local Rule 38-1, Plaintiffs demand a trial by jury of all issues in this action so triable.

Dated: August 29, 2022

Respectfully submitted,

Capstone Law APC

By: /s/ Tarek H. Zohdy

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